No. 2400

United States Circuit Court of Appeals

Ninth Circuit

Appeal from the District Court of the United States for the District of Oregon

OREGON & CALIFORNIA RAILROAD COMPANY, A Corporation, *et al.*,

Defendants and Appellants

JOHN L. SNYDER, *et al.*,

Cross-Complainants and Appellants

WILLIAM F. SLAUGHTER, *et al.*,

Intervenors and Appellants

vs.

THE UNITED STATES OF AMERICA

Appellee

TRANSCRIPT OF RECORD

VOLUME XV

PAGES 7341-7578

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CLERK

TITLE

NAMES AND ADDRESSES OF SOLICITORS UPON THIS APPEAL

For Appellants
OREGON & CALIFORNIA R. R. CO., et al.:

WM. F. HERRIN,
P. F. DUNNE,
J. E. FENTON,
San Francisco, Cal.
WM. D. FENTON,
Portland, Oregon.

For Appellant—UNION TRUST COMPANY,
DOLPH, MALLORY, SIMON & GEARIN,
Portland, Oregon.
MILLER, KING, LANE & TRAFFORD, and
JOHN C. SPOONER,
New York.

For Appellants—JNO. L. SNYDER, *et al.*:
A. W. LAFFERTY,
Portland, Oregon.

For Appellants—WM. F. SLAUGHTER, *et al.*:
L. C. GARRIGUS,
A. W. LAFFERTY,
MOULTON & SCHWARTZ,
Portland, Oregon.
DAY & BREWER,
Seattle, Wash.
A. C. WOODCOCK,
Eugene, Oregon.

For Appellee:

JAMES C. McREYNOLDS,
Attorney General.
CLARENCE L. REAMES,
U. S. Dist. Attorney for Oregon.
B. D. TOWNSEND,
F. C. RABB,
Special Assistants to the Attorney General.

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"VI. The computation of earnings and land proceeds for the purpose of adjusting the amount of the preferential dividend shall be made annually on the 31st of December and the dividend shall be declared at or before the annual meeting in the following April.

"VII. On any dissolution of the Company the preferred stock shall be refunded in full before anything is refunded to the common stock.

"VIII. No sale, disposition incumbrance or lease of the railroad or any part of it nor any mortgage or issue of bonds except the first mortgage bonds at the rate of $20,000 a mile hereinbefore specified nor any operating, traffic or running contract in the nature of a lease or which shall transfer the management or operation of the road or any part of it to another Company nor any consolidation with another Company nor any lease of the railroad of another Company nor any guarantee or assumption of the liabilities of any other Company for bonds coupons dividends or otherwise nor any supplemental articles of incorporation of the Company nor any increase of the preferred or common stock shall be made or be valid without the consent of an absolute majority in amount of all the preferred stock actually issued and outstanding nor shall the Pacific Extension be undertaking without such consent.

"IX. The dividends on the preferred stock for the year 1881 and 1882 not exceeding eight per cent in all may be paid in scrip convertible into preferred stock

instead of in cash." And whereas By a Deed of Trust dated the second day of June 1881 said Company did grant and convey all an singular its railroad, lands and other property present and future to Henry Villard, Robert Davis Peebles and Charles Edward Bretherton their heirs, assigns and legal successors as trustees (subject however, to the prior lien created by the said Deed of Mortgage and Trust of June First 1881) to secure the performance of the conditions upon which said preferred stock was subscribed and issued.

And whereas the said George Henry Hopkins and Patrick Buchan two of the parties of the third part hereto have been duly substituted in the place of Henry Villard and Charles Edward Bretherton and are together with said Robert Davies Peebles the present trustee under said Deed of Trust of June second 1881.

And whereas The said Company is at present engaged in the construction of the southern extension of its railroad to a junction with the Central Pacific Railroad at or near the boundary line between Oregon and California and Proposes to complete its railroad from Corvallis to Junction and from a point at or near Forest Grove to tide water at or near Astoria.

And whereas It has been ascertained from the Estimates of the Engineers engaged in the survey location and construction of the proposed extensions of the said railroad that the amount of $20,000. for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue to which the issue of

said First Mortgage Bonds is limited by the conditions of said Deed of Mortgage and Trust will not be sufficient to construct and complete said proposed extensions.

And Whereas The Holders of an absolute majority in amount of all the preferred stock actually issued outstanding have authorized and consented to the creation and execution of second Mortgage Bonds of said Company of the description and on the terms and conditions hereinafter expressed and the creation and execution of these presents and have authorized and directed the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan as Trustees of the said Deed of Trust of June second 1881 to join in and execute the said Second Mortgage for the purpose of postponing the lien of the said Deed of Trust of June second 1881 to the lien or charge created or intended to be created by these presents.

And whereas The Company in accordance therewith has resolved to make an issue of Second Mortgage Bonds as hereinafter described to be limited to the rate of $10,000. for each mile of railroad now or hereafter constructed as hereinafter specified and actually constructed at the time of issue and which bonds an amount equal to $10,000 per mile for each mile of road now constructed shall be now issued the remainder as the construction of said railroad progresses and to secure the payment of said bonds and interest thereon in the manner herein provided.

And whereas said bonds intended to be secured by these presents together with the coupons annexed thereto and the certificate of the Trustees thereon have been prepared and are numbered consecutively from number one onwards and dated the second day of April 1883 and are in form following that is to say:

United States of America, State of Oregon, Oregon and California Railroad Company of Portland Oregon.

Second Mortgage seven per Cent Gold Bond Amount limited to $10,000 per mile of constructed Road.

$1000. No0000 $1,000.

The Oregon and California Railroad Company for value received hereby binds itself to pay to the bearer at the office of the Company in the City of New York on the first day of April A D 1933 the sum of one thousand dollars in United States gold coin of the present standard and to pay in the meantime interest thereon in like gold, coin at the rate of seven per centum per annum half yearly on the first days of April and October in each year free of tax upon presentation and surrender at such office as they respectively mature of the one hundred coupons annexed. This bond is one of the second mortgage seven per Centum Gold Bonds of the Oregon and California Railroad Company issued and to be issued only at the rate of $10,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue all being of the

same amount form, tenor and date and payable in the same manner and differing only in the indentifying numbers the date of the Trustees certificate and and the number of coupons annexed and all of which bonds issued and to be issued are equally secured by a Mortgage dated May 26th, 1883, of all the railroads of said company constructed and to be constructed that is to say from Portland to Astoria in accordance with the act of Congress of May 4th 1870 and to Junction and from East Portland to California in accordance with the Act of Congress of July 25th 1866 and of all the rallying stock and other property present and future of said Company of every description except the lands granted by the United States to aid in the construction of the said railroads unto the Farmers Loan and Trust Company as Trustees (subject however to the redeemable prior lien of a First Mortgage dated June 1st 1881 made to secure the payment of the principal and interest of the First Mortgage Bonds of said Company issued and to be issued at the rate of only $20,000 for each mile of railroad now or hereafter constructed and being actually constructed at the time of issue which Mortgage is recorded in the office of the County Clerk in Portland Oregon and in all other Counties in which any part of the railroads and lands of said Company are situated.

Said Company further binds itself to pay forthwith upon demand the amount of this bond as aforesaid in case said Company shall fail for six calendar months to pay any coupon annexed to this bond when the same becomes due and such default in payment of interest

shall not have been waived by a majority in amount of the holders of said bonds then oustanding in the manner provided in said Mortgage. This bond is not valid unless the certificate endorsed hereon shall be executed by said Trustee.

In Witness whereof said Company has caused these presents to be sealed with its corporate seal, signed by its President and attested by its assistant secretary this second day of April 1883.

(Seal) President

Attest Assistant Secretary.

(Form of Last Coupon.)

The Oregon and California Railroad Company will pay the bearer on the first day of April 1933 thirty five Dollars in United States gold coin free of tax at the office of the Company in New York being six months interest in Second Mortgage bonds of said Company.

No..... Treasurer

(Trustee's Certificate)

The farmers Loan and Trust Company hereby certifies that the within bond is one of the second Mortgage Seven Per cent Gold Bonds of the Oregon and California Railroad Company secured by the within mentioned Mortgage dated May 26th 1883, and made by said Railroad Company to the said Trust Company as Trustee and that the total amount of said bonds certified does not exceed the rate of $10,000 for each mile of actually constructed railroad.

Trustee

Now this indenture Witnesseth That in pursuance of said resolutions and to secure the punctual payment of said bonds now to be issued and all such bonds as shall be hereafter issued on the security of these presents (but not exceeding in all ten thousand dollars for each mile of road actually constructed at the time of issue) and the interest thereon the Company doth hereby grant, bargain, sell, assign transfer and convey and the said Robert Davie Peebles, George Henry Hopkinson and Patrick Buchan for the purpose of postponing the lien of said Deed of Trust of June second 1881 and of said preferred stock secured by the same to the lien of these presents and of the bonds to be secured hereby do hereby release and convey unto the said Farmers Loan and Trust Company its assigns and legal successors as Trustees of these presents all and singular the railroad lines of the Company now constructed and in operation between East Portland and the southern terminus of the East Side line (being at this date some fifty miles more or less south of Roseburg) and between Portland and Corvallis and between Albany and Lebanon in the State of Oregon including the railroads heretofore known as the Oregon Central Railroad the Western Oregon Railroad and the Albany and Lebanon Railroad being in all including sidings about three hundred and eighty miles in length running through the Counties of Multnomah Clackamas Marion, Linn, Lane, Douglas, Washington, Yamhill, Polk, and Benton in said State of Ore-

gon together, with the ferry boats and landings connecting the said railroads at Portland and East Portland and also all the railroads of said Oregon and California Railroad Company to be hereafter constructed that is to say "from a point at or near Forest Grove to Astoria in accordance with the act of Congress of May 4th 1870 hereinbefore recited and from Corvallis to Junction and from the said southern terminus to a Junction with the Central Pacific Railroad at or near the boundary line between California and Oregon in accordance with the Act of Congress of July 25th 1866 hereinbefore recited and all lands rights of way, easements and premises now acquired or appropriated or which may hereafter be acquired or appropriated for the purpose of the right of way of said railroads or for grounds side tracks, depots warehouses tanks roundhouses stock yards, or any other railroad purposes, and together with all rails, spike ties, timber, iron switches frogs, depots, warehouses round houses machine shops bridges, trestlework and all other buildings or structures now or hereafter belonging to or used for the maintenance or operation of said railroads respectively including all the offices docks, and warehouses of the Company in Portland and East Portland or elsewhere and all locomotives, cars and other rolling stock, railroad and supplies fuel tools and machinery now used or which may hereafter be used in or provided for the maintenance or operation of said railroads and all telegraph lines and other appurtenances of said railroads and the franchise to operate the same and all income earnings, and

profits of said railroads lands and premises and all other present and future property of every description of the said Oregon and California Railroad Company. Saving and excepting and reserving however to the Company out of the conveyance and mortgage hereby made all lands granted by the United States in aid of the Construction of the said Railroads already completed between the termini aforesaid and not yet sold and all lands which may be hereafter granted to the Company by the United States.

To have and to hold the said railroads, lands rolling stock equipment, premises and property unto the use of said Farmers Loan and Trust Company its assigns and legal successors as trustee of these presents free from all prior liens and encumbrances whatsoever except the prior lien created by the said Deed of Mortgage and Trust to Henry Villard, Horace White and Charles Edward Bretherton securing the said First Mortgage Bonds hereinbefore referred to and subject thereto in trust nevertheless for the equal benefit and security pro rato of every holder of any of said bonds to be now issued or which may be hereafter issued as aforesaid and intended to be secured hereby without any priority of any one bond over another by reason of earlier issue or negotiation and for the uses and purposes and with the rights and powers and subject to the provisions agreements covenants and stipulations contained in the following articles that is to say.

Article I The company hereby covenants with the Trustee that it shall and will proceed ith all reasonable dispatch to complete its said railroads to California. That cars can run through from Portland to San Francisco and will keep all the railroads from time to time constructed and rolling stock and other property of the Company in good order and repair and will reconstruct replace and restore all such or so much and such parts thereof as may be worn out wrecked destroyed or displayed and will pay all taxes assessed against said railroads and premises and will pay the principal moneys secured by all bonds to be issued on the security of these presents and all interest due thereon at the times and places and in the manner in said bonds and the coupons annexed thereto respectively specified and perform all the conditions and stipulations in said bonds expressed and contained.

Article 2. And further that if any coupon or any one of said bonds shall not be paid on presentation as therein provided and shall remain unpaid for six calendar months and such default shall not be waived in manner hereinafter specified then the Company shall and will forthwith pay on demand at the place and in the manner in said bond specified the principal of all such bonds.

Article 3. Until default in any payment required by the previous articles the Company shall freely possess the said railroads and premises and the income earnings and profits thereof and may contract to sell and

dispose of all lands comprised in this mortgage which shall not be required for the maintenance and operation of its railroads; and upon the request of the Company the Trustee shall release all such lands so sold by apt and, proper writings.

Article 4. In case the Company shall fail to keep the said railroads rolling stock, equipments and premises herein comprised or at any time hereafter subject to the lien of these presents in good order and repair or in case default shall be made in payment of any coupon on any of said bonds or any part thereof, and such default shall continue for six calendar months or in payment of any taxes assessed against said railroads rolling stock equipment, premises and property hereby mortgage it shall be lawful for the Trustees to take possession personally or by its agent or agents of said railroads, rolling stock and equipment and other premises hereby conveyed or which may be there subject to the lien of these presents and to operate the said railroads and manage the same and collect and receive the income earnings and tolls thereof and the proceeds of lands contracted to be sold and the Company covenants and agrees that it will on demands surrender such possession and permit the Trustees to use and possess said railroads rolling stock and premises without interruption or disturbance and will permit and suffer the Trustee to collect any get in all freight moneys ticket balances or other earnings either there due or thereafter becoming due and in case it may be necessary or may be deemed advisable

by the trustee to take legal proceedings for foreclosure of this mortgage or to obtain possession of said premises in pursuance of the provisions of this article it shall be entitled to the appointment of a Receiver or Receivers to be nominated by it or to be itself nominated and appointed Receiver as it may think most expedient.

Article 5. The Trustee when in possession of said railroads and premises shall have the right as irrevocable attorney of the Company to bring or defend in the name of the Company any actions for the collection of income freight moneys tickets, balance or other earnings or for obtaining or defending the possession of any property subject to the lien or trusts of these presents or for the condemnation of lands required for the maintenance or operation of said railroads or in any manner effecting the maintenance thereof.

Article 6. The Trustee is hereby authorized in its discretion to accept possession of said railroads with the rolling stock and appurtenances herein comprised although no such default as aforesaid shall have been made if the Company shall offer to give up possessionto it. and thereupon tomanage and operate the same and collect the income and earnings thereof as hereinbefore provided.

Article 7, It shall be the duty of the Trustee to take possession of said railroads and premises after any such default as aforesaid upon written requisition made to it fur such purpose by the holders of not le than one quarter in amount o-f said bonds then outstanding.

Article 8. The Trustee shall have full power from time to time for the purpose of enforcing and administering the trusts and powers of these presents and for operating and managing or keeping in good order and repair the said railroads rolling stock and premises to hire and employ such managers, officers clerks agents, attorneys and assistants as it shall deed necessary or useful and to defray all expenses of such employment and of otherwise executing the trusts of these presents and to pay any taxes, assessed upon the trust premises or any part thereof or any other prior charges thereon out of any moneys coming to its hands and in case the Trustee shall have no funds in his hands and shall make any payments either for such purposes or in any other manner for the protection or preservation of the trust premises (whether the Trustee shall be in possession of the same or not) the amounts so paid together with interest thereonat the rate of ten (10) per centum per annum shall be a first charge on the trust premises (subject however to the said Deedo-f Mor-tgage and Trust of the first day of June 1881 and the first Mortgage Bonds thereby secured) and the earnings income and proceeds thereof and in case the Company shall fail on demand to repay the Trustee any amount paid by it as aforesaid with interest at the rate aforesaid it may enter upon and take possession of said railroads and premises in the same manner as if the Company had made default in payment of interest on the bonds hereby secured and retain possession and received the income earnings and proceeds thereof and until it shall have recouped itself

the amount so paid. with interest as aforesaid.

Article 9. After any such default as aforesaid in payment of interest or a-ny part thereof and such default shall have continued for one year and shall not have been waived as hereinbefore provided or in case the principal of any of said bonds shall not be paid on the first day of April 1933 it shall be the duty of the Trustee to forthwith proceed to enforce this security and to sell (subject to any prior lien) If any there shall be under said Mortgage of June first 1881 made to secure said First Mortgage Bonds said railroads rolling stock equipment and appurtenances and other the premises comprised herein or there subject to the lien of these presents. in one lot or in more than one lot or parcel and at one time or at different times and for cash or on reasonable credit payment therefor being secured on the property sold and otherwise upon such termsn and in such manner as the Trustee may in its discretion think best for the parties in interest.

Article 10. Such salesor sale may be made either without suit by the Trusteeor duly authorized agent by public auction at the door of the Court House of Multnomah County in Oregon after notice of such sale shall have been published at least once a week for four consecutive weeks in the New York Herald (or in case said paper shall not be there published then in some other daily paper of general circulation published in New York and Selected by the Trustee) and in case said sale shall be adjourned the like four weeks notice

shall be given of said adjourned sale or at the option of the Trustees such sale may be made judicially by action or suit brought by the Trustee for the foreclosure of this mortgage and enforcement of the liens hereby created or administration of the tursts of these presents as the Trustee may deem most expedient.

Article 11, The moneys received from the net earnings of said railroads or purchase money on any such sale thereof as hereinbefore provided when in possession of the Trustee shall be applied in the following order. In the first place in payment of the costs and exprenses of the execution of the trusts of these presents and the management and operation of said railroads and the protection and preservation of the trusts premises including a reasonable compensation to the Trustee(in addition to the ordinary compensation salary herein provided for) and the fees of counsel and attorneys and secondly in payment of all coupons then overdue in the order in which they shall have become due those of earlier date having priority over those of later date and thirdly as payment of the principal of any of said bonds and the remainder if any there be shall be paid to the Company to be divided between the preferred and common stockholders of the Company according to their respective rights.

Article 12. On any sale by virtue of these presents, the receipt of the Trustee shall be a sufficient discharge to any purchaser for all purchase money paid by him and any conyeyance or assignment made by the Trustee

shall vest in said purchaser all the title and interest of the Company as fully and effectually as if the Company were party thereto.

Article 13. The Company hereby covenants and agrees with the Trustee on behalf and for the benefit of the holders of the bonds intended to be secured by these presents. That it will from time to time and at all times hereafter upon reasonable request made, execute, acknowledge and deliver all such further acts, deeds conveyances and assurances in the law for the better assuring into the Trustee and its legal successors from time to time as Trustee of these presents upon the trusts and for the purposes herein expressed the said railroads, rolling stock equipment and premises herein comprised free from all prior liens and encumbrances excepting the prior lien of the First Mortgage hereinbefore specified and all other present and future property of the Company of every kind and description as by the Trustee or its counsel learned in the law shall be reasonably devised advised or required.

Article 14. On payment and cancellation of all of said bonds and the coupons thereto attached and payment of all expenses incurred by the Trustees in the execution of the tru-sts of these presents this indenture shall become void and all the estate and interest of the trustee in the premises conveyed hereby and the lien created thereon by these presents shall absolutely cease and determine.

-Article 15. All rights or powers by these presents,

give to or covenants stipulations or agreements made with the said Farmers Loan and Trust Company shall survive and enure to the benefit of the Trustee or Trustees for the time being of these presents in the same manner as if the said Trustee or Trustees has been named herein and the word "Trustee" shall be held to mean the said Farmers Loan and Trust Company while continuing to the trustee hereof and the Trustee or Trustees for the time being of these presents.

Article 16. The Trustee shall bin in no manner responsible for any act default or misconduct of any agent bank banker broker or other persons employed by it unles- it shall be chargeable with culpable negligence in their selection or in the continuance of their employment nor otherwise except for its own wilfy default misconduct or gross nigligence. But except as herein specially authorized the Trustee shall have no power to delegate its power or authority to any other person whatsoever.

Article 17. The Trustee shall be paid by the Company or in default of the trust moneys the sum of one dollar per bond for its entire service in the execution of the trusts herein contained until default and in addition in case of default a further reasonable compensation for such additional services as it may be called upon to render in taking possession of and managing the premises or selling the same or bringing suit for the foreclosure of these presents enforcement of the liens or trusts hereby created or the collection of the moneys secured or to be secured by these presents.

Article 18. In case of the resignation of the Trustee or of the incapacity failure or refusal of the Trustee to perform any of its duties or obligations under this trust then the Company shall apply to a Judge in the Circuit Court of the United States for the District of Oregon to remove the Trustee so incapacitated failing or refusing to act and to appoint a new Trustee or Trustees. and any such judge may appointe a new Trustee of Trustees by instrument under his hand and seal without suit or other legal proceedings therefor in the plave of the Trustess so resigning incapacitated failing or refusing to act but in no case shall a citizen of the State of Oregon be appointed or be capable of acting as a trustee of these Presents? And it is hereby declared to be the duty of the Trustee to bring all actions or suits in any way relating to the trusts of these presents in the courts of the United States whenever such courts shall have jurisdiction of such action or suit and not in the Courts of the State?

Article 19. A Majority in amount of the Holders of the outstanding bonds at any time secured by these presents shall have full power at any time without suit to remove the then existing Trustee in its or their place as one of the Trustees or as sale Trustee and any such act of the Majority in amount of the bondholders shall deemed to be sufficiently made executed evidenced and proved by a written instrument or instruments purporting to be signed by the bondholders and stating the indentifying numbers and the amount of the bonds held

by each signer and the respective signature to which and the fact of the production to a notary at the time of the signature of the bonds specified shall be acknowledged before and certified by such notary public and his certificates shall be attach-ed and authenticated by his notarial seal. No proof shall be necessary of the qualifications of any such notary so purporting to act in the United State. the British Dominoms Holland France or the German Empire.

Article 20. Any appointment of new Trustees or a new Trustee made by the majority of the bondholders or a judge as herein before provided shall be effectual to vest in the New Trustees or new Trustee all estates right, trusts powers and duties as fully as if they or he or it were trustees or a trustee party to these presents without any new deed or conveyance but nevertheless the Company hereby covenants in any and every such case to make upon request of the New Trustees or Trustee all such deeds conveyances and assurances as may be appropriated for more fully and certainly vesting in and confirming to such new Trustees or Trustee such estate rights, powers trustes and duties and every resigning Trustee shall on like request make and execute such deeds conveyances and assurances to his or its successors.

Article 21. A Majority in amount of the holders of the outstanding bonds at any time secured by these presents may by written instrument to be executed and proved as provided in article 19 at any time before the

actual sale of the premises waive any default in payment of interest yet so far only that the principal of the bonds shall cease to be payable forthwith in case said principal shall have become so payable by reason of such default but such waiver shall be of no effect unles the company shall together with such instrument or instruments of waiver hand to the Trustee a sum of money sufficient to pay all interest then in arrear and the Trustee shall then proceed to pay said interest in the manner provided by these presents.

Artice 22. The company itselfs it successors and assigns doth hereby absolutely and irrevocably waive the benefit or advantage of any and all valuation stay appraisement of redemption laws or laws requiring liens or mortgages to be foreclosed by action or suit and of all other laws now existing or hereafter passed which but for this provisions would prevent the absolute and unconditional sale of the premises hereby conveyed by a court or by the Trustees wuthout suit and on any such sale the Company for itself its successors and assigns covenants to join in and confirm the conveyance to the purchaser.

Article 23. In case of any sale of said premises whether by the Trustee or by a court any purchaser shall be entitled to credit in part payment of the purchase money for any of the outstanding coupons or bonds secured by these presents and owned by him upon surrendering such coupons or bonds and such coupons or bonds shall be reckoned as equivalent to the sum which

would be their proportion of the net proceeds of the sale after the deduction of all expenses. The Payment to be made in cash to cover such expenses shall be fixed prviously by the Trustee or the Court as the case may be and announced in the advertisement of sale.

Article 24. The trustee shall have power to release from the lien of these presents any land rolling stock or other property become useles- for the purpose of the railroads by alteration of route changes in machinery or equipment otherwise but only on condition that the property so sold forthwith replaced by other property of equal value and subjected to the lien of these presents.

Article 25. On any sale whether by the trustee or a court of the property hereby conveyed or any part thereof the Trustee shall have the right to buy in the same and a majority in amount of the holders of the outstanding bonds shall have the right by written instrument evidenced and proved in the same manner as provided in article 19 to fix a sum which it shall be the duty of the Trustee to bid for the property to be sold on behalf and for the benefit of such bondholders but only on condition that due providions is made such majority to the satisfaction of the Trustee or the court as the case may be for the payment in cash of all expenses incurred in the execution of the trusts of these presents and of the proportion of such sum payable to the bondholers not concurring in such request.

Article 26. On any such pruchase the Trustee shall

hold the Property so purchased upon trust for the equal benefit of the hondholders who had required the trustee to buy in the property on their behalf as the absolute property of said bondholders witout any right of redemption or resale in favor of the Company or any bondholder.

-Article 27. The Trustee shall deposit all trust funds which may from time to time come to its hands in its name in such respectable bank or banks trust company or companies in London New York, Frankfort San Francisco or Portland as it may from time to time decide upon.

Article 28. Of the said issue of second Mortgage Bonds an amount equal to $10,000 for each mile of the railroad of the Company now constructed may be issued immediately and whenever the Company shall have constructed any additional section of said railroad of five consecutive miles the company may prepare and execute such a number of additional bonds to be secured by these presents as shall not exceed in the whole including the bonds to be now issued the rate of $10,000 for each mile of constructed road and upon inspection of the certificate of the Supervising Engineer of the Trustee or Trustees for the time being under the said Deed of Mortgage and Trust dated June first 1881 made as provided in article 42 thereof the Trustee under these presents shall certify and deliver to the Company the said bonds of the issue hereby secured at the rate aforesaid.

Article 29. All bonds to be hereafter issued as aforesaid shall be in the same form and of the same date and payable in the same manner as the bonds to be now issued except that the Trustees Certificates thereon shall bear the date when actually certified by the Trustee and said bonds shall have all coupons of earlier date cut off so as to bear interest only from the date when certified and they shall all be consecutively numbered from the last number issud onwards and all such bonds when certified by the Trustee shall be in all respects equally secured by these presents with the bonds to be now issued.

Article 30. And whereas by reason of distance lapse of time or other accident the date and actual execution of these presents by the vaious parties hereto has been delayed and such execution may be previous or subsequent to the day of which it bears date now it is hereby expressly declared that these presents shall take effect as from the 2nd day of Apri 1883 and shall be valid and effectual as if dated and executed on that day and that these presents are the indenture of mortgage referred to in the bonds hereinbefore mentioned the form whereof is hereinbefore set forth and is made and executed by and between the parties hereto as and for the indenture of mortgage and trust securing and intended to secure said bonds as in said bonds is mentioned and recited.

In witness whereof the Oregon and California Railroad Company and the Farmers Loan and Trust Com-

pany pursuant to resolution of their respective Board of Directors duly authorizing the same have caused these presents and nineteen duplicates hereof to be sealed with their respective corporate seals, signed by their respective presidents and attested by their respective secretaries or assistant secretaries and the said parties of the third part respectively have hereunto and unto the said nineteen duplicates hereof set their hands and seals the day and year above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

By H Villard President

(Corporate Seal)
Attest H H Tyndale Assistant Secretary.

THE FARMERS LOAN AND TRUST COMPANY

By R G Rolston President.

(Corp. Seal) Attest Wm H Leupp Secretary.

R D Pebbles)as trustee under the said Deed of
G H Hopkinson)Trust of June second 1881
P Buchan)

Signed, sealed and delivered by said Oregon and California Railroad Company in Presence of:

Geo H Saxer

C A Stafford

Signed, sealed and delivered by said Farmers Loan and Trust Company in presence of
C R Leake
George W Romain.

Signed, sealed and delivered by George Henry Hopkinson and Patrick Buchan
In the presence of
Edward Jno Pringuer.
17 Gresham House E C

F W Myers
U S Consulate General
London

Signed, sealed and delivered by Robert Davie Peeble in the presence of
Geo A Saxer
Edwd. H Argent.

State of New York)
) ss.
City and County of New York)

Be it remembered That on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon and for the State of New York residing in said City of New York personally appeared Henry Villard the President of the Oregon and California Railroad Company and Hector H Tyndale the Assistant Secretary of the Same Company to me respectively personally known to be such who being

by me severally duly sworn did depose and say that he said Henry Villard resides in the City and State of New York that he said Hector H Tyndale also resides in said City of New York that he said Henry Villard is the President and he said Hector H. Tyndale is the Assistant Secretary of said Company; that they known the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate sealc that it was so affixed thereto by order of the Board of Directors of said Company; and that they the said Henry Villard and Hector H Tyndale signed, their names thereto by the like order as President and Assistan Secretary of said Company respectively and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

(Comms. Seal) LOUIS M FULTON

A Commissioner for Oregon in New York.

State of New York)
) ss.
City and County of New York)

Be it remembered that on this thirteenth day of August A D 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of

New York resising in said City of New York personally appeared Roswell G Rolston the President of the Farmers Loan and Trust Company and William H Leupp the Secretary of the same Company to me respectively personally known to be such who being by me severally duly sworn did depose and say that he said Roswell G Rolston resides in the city and State of New York that he, said William H Leupp also Resides in said City of New York, that he said Roswell G Rolston is the President and he said William H Leupp is the Secretary of said Company; that they know the corporate seal of said Company that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company and that they the said Roswell G Rolston and William H Leupp signed their names thereto by the like order as President and Secretary of said Company respectively and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed and as the free and voluntary act and deed of said Company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 13th day of August A D 1883.

(Comm Seal) LOUIS M FULTON

A Commission for Oregon in New York.

Consulate General of the United States of America for Great Britain and Ireland, London.)

On this the sixth day of September 1883 before me Lebbons H Mitchell Vice and Deputy Consul General and ex-officio a Notary Public of the United State of America at London England personally appeared George Henry Hopkinson and Patrick Buchan to me known to be respectively the persons of those respective names described in and who have executed the foregoing deed of Mortgage and Trust and then and there respectively acknowledged the same to be their free and voluntary act and deed for the uses and purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal at Londin aforesaid the day and year above written.

(U S C G Seal) L H MITCHELL

Vice and Deputy Consul General U S A London.

State of New York)
) ss.
City and County of New York)

Be it remembered that on this twenty fifth day of October 1883 before me Louis M Fulton a commissioner of the State of Oregon in and for the State of New York residing in said City of New York personally appeared Robert Davie Peebles to me known to be the person of that named descriped in and who executed the foregoing deed of Mortgage and Trust and then and there acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal in the date above written.

LOUIS M FULTON

(Com Seal) Commissioner for Oregon in New York.
Rec. for Record Nov 5th at 3 P M

No. 9554

Form M 44.

STATE OF OREGON,)
) ss.
County of Multnomah)

I. JOHN B. COFFEE, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Mortgage, The Oregon and California Railroad Company to The Framers Loan and Trust Company, recorded in Book 41 page 33 Record of Mortgages, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Mortgage as the same appears of record in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1918.

(Seal) JOHN B. COFFEY, County Clerk.
Filed May 10, 1918.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 399

is a certified copy of a trust deed executed by the Oregon and California Railroad Company to Milton S. Latham, Faxon D. Atherton and William Norris, April 15, 1870, recorded on page 727 of Deed Book "K" of the Records of Deeds of Multnomah County, Oregon, on April 18, 1870 and about the same time thereafter recorded in the Records of Deeds of all other counties in Oregon in which any part of said granted lands were situated, which exhibit is as follows:

THIS INDENTURE, Made and entered into at the City of Portland, Multnomah County, and State of Oregon, this fifteenth day of April, in the year of our Lord One Thousand Eight Hundred and Seventy, between the Oregon and California Railroad Company, a body corporate, organized at Portland, in the State of Oregon, on the Seventeenth day of March, in the year of our Lord One Thousand Eight Hundred and Seventy under an act of the Legislature of the State of Oregon approved October Fourteenth, A. D. One Thousand Eight Hundred and Sixty-two, entitled "An Act providing for private incorporations and the appropriation of private property therefor," and Acts amendatory thereof and supplemental thereto, party of the first part and Milton S. Latham, Faxon D. Atherton, and William Norris, all of city and county of San Francisco, State of California, parties of the second part, WITNESSETH:

WHEREAS, The Congress of the United States

of America did, by an Act approved July Twenty-fifth in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Central Pacific Railroad in California, to Portland in Oregon," and by Acts supplemental thereto, and amendatory thereof, grant certain lands to, and confer certain benefits upon such Oregon Company, as should be designated by the Legislature of the State of Oregon;

And WHEREAS, in pursuance of such Act of Congress, the Legislature of the State of Oregon, did on the twentieth day of October in the year of our Lord, One Thousand Eight Hundred and Sixty-eight, by joint resolution thereof, duly designated the Oregon Central Railroad Company, a corporation, incorporated at Salem in the State of Oregon, April twenty-second in the year of our Lord, One Thousand Eight Hundred and Sixty-seven, as the Company to take and manage the lands and franchises so granted to such Oregon Company by the Acts of Congress aforesaid, which Oregon Central Railroad Company did afterwards, and within the time required by such Acts of Congress duly file its assent to the said Acts and all the provisions thereof as required by the same in the office of the Secretary of the Interior of the United States at Washington City, and did locate the line of its railroad and prepare and file its map in strict accordance with all the provisions of such Acts and did further, prior to De-

cember twenty-fifth, in the year of our Lord One Thousand Eight Hundred and Sixty-nine, complete over twenty miles of its railroad and telegraph line and did fully equip the same in all respects as required by such Acts of Congress, and the said twenty miles of railroad and telegraph line were accepted by the government of the United States as in such Acts provided and the lands to which such company became entitled by virtue of a full and complete compliance with all the provisions of such Acts, and by the completion and equipment of such twenty miles of railroad were by the Secretary of the Interior withdrawn from market and ordered segregated from the public domain for the use and benefit of such Oregon Railroad Company, as in and by such Acts of Congress provided; And

WHEREAS, The said Oregon Central Railroad Company did on the twentyninth day of March, A. D. one Thousand Eight Hundred and Seventy, by a deed of conveyance duly and legally made, executed, acknowledged and delivered, bargain, sell, assign, set-over; en*foeff*, convey and confirm unto the Oregon and California Railroad Company, party of the first part herein, all its right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent of, in and to the land, franchises and benefits whatsoever, granted or intended to be granted by said Acts of Congress upon such Oregon Company, and all right, title, interest, claim, property and demand whatsoever of the said Oregon Central

Railroad Company in such lands and franchise, and WHEREAS, The said Oregon and California Railroad Company did by a resolution of its Board of Directors at a meeting of such Board, duly called and legally held at the office of such Company in the City of Portland on the thirteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, authorize the issue by such Company, in its name and under its corporate seal of Eighteen Thousand Four Hundred and Fifty Bonds, numbered respectively from number One to number Eighteen Thousand Four Hundred and Fifty. That is to say, Seven Thousand Four Hundred and Fifty Bonds of the denomination of One Thousand Dollars each, and numbered respectively from number One to number Seven Thousand Four Hundred and Fifty, both inclusive; Six Thousand Bonds of the denomination of Five Hundred Dollars each, and numbered respectively from number Seven Thousand Four Hundred and Fifty-one to number Thirteen Thousand Four Hundred and Fifty both inclusive, and Five Thousand Bonds of denomination of One Hundred Dollars each, and numbered respectively from number Thirteen Thousand Four Hundred and Fifty-one to number Eighteen Thousand Four Hundred and Fifty, both inclusive; such Bonds amounting in sum total to Ten Million Nine Hundred and Fifty Thousand Dollars. That all such Bonds should bear date April Fifteenth, A. D. One Thousand Eight Hundred and Seventy, and should be payable in the City of New York on the first day of April, in the year

of our Lord, One Thousand Eight Hundred and Ninet
in the gold coin of the United States, and should be
interest at the rate of seven per centum per annum, pa
able semi-annually in like gold coin of the United Stat
at the Banking House of Messrs. Dabney Morgan Cor
pany, in the City of New York, which should be re
resented by half yearly interest coupons attached
each Bond, and should be payable on the first days
April and October of each year, and

WHEREAS, such Board of Directors did at the
meeting aforesaid, by resolution duly passed, direct th
all such Bonds should be delivered to Milton S. Latha
and Faxton D. Atherton, two of the parties of the se
ond part herein as trustees for the owners and holde
thereof, and of such persons as should at any time her
after become the owners and holders thereof, an
did further resolve, that a mortgage should
duly executed by the party of the first part heret
under its corporate seal and in its name and delivered
said Milton S. Latham and Faxon D. Atherton, two
the parties of the second part hereto, as a security fo
the payment of all such Bonds, both principal and i
terest, which Mortgage should cover and include th
railroad and all other corporate property, real person
and mixed, of the parties of the first part hereto, sav
and except the lands, franchises and benefits granted
intended to be granted by the Acts of Congress afor
said to the Oregon Company, and which were the
owned by the party of the first part hereto, or in whic

franchises and benefits were to be especially excepted such Company had any interest, and all which lands from such mortgage, and

WHEREAS, The Board of Directors of the party of the first part hereto, did, at their meeting aforesaid further resolve, in substance and legal effect that in order to further provide for the security and payment of the principal of the Eighteen Thousand Four Hundred and Fifty Bonds aforesaid, so directed to be issued by the party of the first part, and for the purpose of creating a sinking fund for the redemption of the principal of such bond at their maturity, the party of the first part hereto, should by its president and secretary, and in its name and under its corporate seal, duly make, execute, acknowledge and deliver to Milton S. Latham, Faxon D. Atherton and *William* Norris, parties of the second part thereto, a deed of conveyance of all the lands and franchises granted or intended to be granted to the Oregon Company by the said Act of Congress, approved July Twenty-fifth, in the year of our Lord, One Thousand Eight Hundred and Sixty-six, and entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof; which conveyance should be in trust for the benefit of the Bondholders of the party of the first part hereto, as aforesaid; and for the purpose of creating from the proceeds thereof a sinking fund for the redemption of said Eight-

een Thousand Four Hundred and Fifty Bonds as aforesaid; that such lands and franchises should not be sold or disposed of by such trustees without the consent of the party of the first part hereto, nor except in the manner and upon such terms as the party of the first part might direct, and that all the proceeds thereof should be invested by such trustees, party of the second part hereto, in United States Securities, or such other securities as the party of the first part hereto might consent to, and that such deed of trust should contain all the provisions, conditions and covenants hereafter contained, and all stipulations, agrements, covenants and conditions which the president and secretary of the party of the first part hereto might deem material, necessary or proper, for the mutual protection of the interest of the party of the first part hereto, and its Bondholders, and

WHEREAS, the said mortgage so directed to be issued, has been duly executed and acknowledged, and prepared for record in strict accordance with all the requirements of the resolutions of the Board of Directors of the party of the first part hereto, as aforesaid:

THEREFORE, THIS INDENTURE WITNESSETH:—In consideration of the premises aforesaid, that the Oregon and California Railroad Company, party of the first part hereto, and the further consideration of One Dollar, the receipt whereof is acknowledged, hath granted, bargained, sold, assigned, aliened, set-

over, enfoeffed, conveyed and confirmed and by these presents it does grant, bargain, sell, assign, alien. set-over, enfeoff, convey and confirm unto said Milton S. Latham, Faxon D. Atherton, and *William* Norris, parties of the second part hereto, all the lands and franchises, with their appurtenances lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress approved July Twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof. And also, all the right, title, interest, claim, property and demand whatsoever both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has or owns, or to which it is in anywise entitled, in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid, and also all future right, title, interest, claim. property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the party of the first part hereto. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands, property and franchises, and every part and parcel thereof unto said Milton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part thereto, and to their successors or successor and assigns forever. In trust, nevertheless, for the following uses and purposes, and upon the following conditions and covenants, and, for the mutual interests of the party of the first part hereto, and the holders of said Eighteen Thousand Four Hundred and Fifty Bonds so directed to be issued by the party of the first part hereto, as aforesaid, and two thousand of which Bonds of denomination of One Thousand Dollars each have already been issued, and other large amounts thereof are now about to be issued, That is to say: The said parties of the second part hereto, shall have and hold the whole of the lands and franchises so granted, or intended to be granted by said Acts of Congress to said Oregon Company, and herein conveyed, and intended to be conveyed by the party of the first part hereto in trust, for the benefit of the holders of said Eighteen Thousand Four Hundred and Fifty Bonds, and for the sole and exclusive purpose of creating from the proceeds thereof, when sold as hereinafter stated, a sinking fund for the redemption of such Bonds at their maturity; and for such purpose, the said parties of the second part hereto or their successors or successor may, by and with the consent of the party of the first part hereto, but not otherwise, at any time before the maturing of the principal of such Bonds, sell and dis-

pose of all or any part or portion of the lands and franchises so granted as aforesaid, by such Acts of Congress, and herein conveyed to such person or persons, firm or firms, associations or bodies corporate, and for such price and upon such terms as the party of the first part herein may, by and through its President advise or agree to; and the proceeds of all such lands and franchises or right to such lands shall, after deducting from such gross receipts all charges, costs and expenses, legitimately or necessarily incurred in making such disposition and sale, shall from time to time as realized, be received by such trustees, parties of the second part hereto, and shall be by them, their successors or successor, from time to time, as the same are received, invested in the United States securities, unless the President of the party of the first part hereto shall direct that such proceeds shall be invested in other securities, in wihch event the same shall be invested in such securities, as such President of the party of the first part hereto may designate, which securities, whether the same be United States, or other securities shall create a sinking fund and as such fund, shall be held, managed and controlled by and with the advice and under the direction of the President of the party of the first part hereto by said trustees, parties of the second part hereto, for the reduction and payment of the principal of the said Eighteen Thousand Four Hundred and Fifty Bonds of the party of the first part hereto at the maturity thereof, but no part of such fund, either principal or interest, shall ever at any time without the written consent of

the party of the first part hereto be used or applied in the payment of any interest on such Bonds, or in any other way or manner diverted, but the same shall be held and husbanded by such Trustees in accordance with the directions of the President of the party of the first part hereto, and in such manner as shall be most likely to increase the volume of such fund and advance the mutual interests of the party of the first part hereto and its Bondholders aforesaid: And in the event that the principal of such Bonds is not otherwise paid at the maturity thereof, than the fund aforesaid, which shall have been accrued from the proceeds of the sales of said lands and interest thereon, shall be, by such Trustees, parties of the second part their successors or successor, applied to the discharge and payment of any and all amounts, both principal and interest then remaining due and unpaid on all such Bonds and in the event that such fund shall then be insufficient to discharge the whole amount then due on all such Bonds, then the same shall be applied thereon rateably according to the interest respectively of all such Bondholders, And, it is further stipulated and agreed between the parties hereto, that in the event that there remains any deficiency in the payment of the principal and interest due on said Eighteen Thousand Four Hundred and Fifty Bonds after the whole of such fund aforesaid shall be applied thereon at the maturity thereof, then the trustees, parties of the second part hereto, their successors or successor shall have full power and authority to sell and convey any and all lands then remaining undisposed of, which are

included in the grant made by the Acts of Congress aforesaid and which are hereby conveyed and intended to be conveyed, which lands may be sold in whole or in part, as the trustees aforesaid may deem for the best interest of said Bond holders, but the same shall only be sold at Public Auction in the City of Portland, in the State of Oregon, to the highest bidder, and no such sale shall be made unless notice of the time and place thereof shall first be given by publication for at least six weeks in a weekly newspaper of general circulation published in the City of Portland, in the State of Oregon, and the proceeds of such sale or sales shall be applied in like manner to the payment of any balance, either principal or interest then remaining unpaid of such Bonds aforesaid, or any of them. And upon the full payment and redemption of said Eighteen Thousand Four Hundred and Fifty Bonds, principal and interest, whether before or after maturity the trustees aforesaid, parties of the second part hereto, their successors or successor shall re-convey by good and sufficient Deed of C-onveyance to the said Oregon and California Railroad Company, party of the first part hereto, its successors or successor or assigns, all its right, title, interest, property and claim whatsoever which the said trustees, party of the second part hereto, their successors or successor may then have of, in or to any of the lands or franchises hereby granted and conveyed to the said parties of the second part hereto, and shall also assign, set over, transfer and deliver to the said party of the first part hereto, its successors or assigns, any and all moneys,

bonds, notes, or other securities then remaining in such sinking fund and held by such Trustees for the use and purposes aforesaid, all of which re-conveyances and transfers shall be made without any other or further consideration than the redemption of all such Bonds as aforesaid, by the party of the first part hereto, its successors or assigns. And it is mutually agreed by and between the parties hereto that the said Trustees, or either, or any of them, or the survivor of them, or any successor, or successors in such office may resign or discharge themselves, or himself of the Trust created, or declared by these presents by notice in writing to the said Company three months before such resignation shall take effect, or such shorter time as they may accept as adequate. And it is further hereby agreed between the parties to this Indenture, that in the mean time, until the said lands hereby granted and conveyed are sold by such Trustees as hereinbefore provided for, it shall be lawful for the party of the first part hereto, and its successors, peaceably and quietly to have, hold, use, possess and enjoy the said lands with the appurtenances, and to receive the incomes, rents, issues and profits thereof, to its own use and benefit, without any hindrance or interruption, suit or disturbance whatsoever of, or by, the said parties of the second part or their or his successor, or successors, in the Trust, or in any other person whatever claiming, or to claim, the same by, from, or under them, or any of them; and the said party of the first part, its successors and all and every other person or persons whomsoever lawfully or equitably claiming any

estate, right, title or interest of, in and to the hereinbefore granted premises, by, from or under, or in trust, for it shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said parties of the second part, or the survivor of them, or their or his successor or successors or assigns make, do and execute, or cause to be made, done and executed, all and every such further and lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said parties of the second part, as by the said parties of the second part, or the survivor of them, their or his successor or successors, or the Counsel learned in the law, shall be reasonably devised, advised or required, And Also, that the said party of the first part and its successors, the above granted, bargained, sold and assigned premises, and every part and parcel thereof with the appurtenances thereof unto the said parties of the second part or the survivor of them, their or his successor or successors, against the said party of the first part and its successors, and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under it shall and will Warrant, and by these presents forever Defend.

IN WITNESS WHEREOF, the said party of the first has caused its Corporate Seal to be affixed to these presents and the same to be signed by its Presi-

dent and Secretary by resolution of the Board of Directors thereof, at the City of Portland, Multnomah County State of Oregon, this fifteenth day of April, in the year of Lord, One Thousand Eight Hundred and Seventy.

Ben Holladay,

President of the Oregon and California Railroad Company

(SEAL) A. G. Cunningham,

Secretary of the Oregon and California Railroad Company

In Presence of
J. H. Mitchell,
Geo. E. Cole.

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, that on this Eighteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy, before me, the undersigned, a Notary Public in and for said County of Multnomah and State of Oregon, duly commissioned, sworn and fully qualified, personally appeared the above named Ben Holladay, President of the Oregon and California Railroad Company, (and A. G. Cunningham, Secretary of the Oregon and California Railroad Company), whose names are subscribed to the foregoing instrument as parties thereto, personally known to me to be the individuals described in and who

executed the said instrument, and the severally acknowledged to me that he, the said Ben Holladay, as President of the said Oregon and California Railroad Company, and he, the said A. G. Cunningham, as Secretary of the said Oregon and California Railroad Company, executed the same as and for the Act and Deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned, and the said A. G. Cunningham being by me duly sworn did depose and say, that he is the Secretary of the Oregon and California Railroad Company and resides at the City of Portland, Multnomah County, in the State of Oregon; that he is the legal custodian of and is acquainted with the Corporate Seal of said Company; that the seal affixed to the within Trust Deed is such corporate seal, that the same was affixed by him as Secreary of said Company, on the Eighteenth day of April, A. D. One Thousand Eight Hundred and Seventy, by order of the Board of Directors of said Company and that he signed his name as Secretary to said Trust Deed by the like order of said Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal the day and year first above writetn.

(NOTARIAL SEAL) Geo. W. Murray,
Notary Public.

(U. S. Rev. Stamps, 5 cents, Cancelled.)

STATE OF OREGON,)
)ss.
County of Multnomah.)

I, A. G. Cunningham, Secretary of the Oregon and California Railroad Company do hereby certify that each of the Eighteen Thousand Four Hundred and Fifty Bonds, which this Trust Deed is given to secure, has placed upon it the requisite U. S. Internal Revenue Stamps as required by law; that such Bonds in the aggregate have placed thereon and all duly cancelled, U. S. Internal Revenue Stamps to the amount of Fourteen Thousand Seven Hundred and Ninety-five Dollars.

A. G. Cunningham,
Secretary of the Oregon and California
Railroad Company.

(SEAL, O.& C.R.R.Co.)
(United State Revenue Stamps, 5 cents
Cancelled.)

STATE OF OREGON,)
)
Department of State.)

I, Samuel E. May, Secretary of the State of Oregon, do hereby certify that Geo. W. Murray, whose name is subscribed to the foregoing and annexed certificate of acknowledgement to the foregoing deed of trust, was, at the time of signing the same, to-wit: on the Eighteenth day of April, A. D. One Thousand Eight Hundred and Seventy a duly commissioned, qualified and acting Notary Public in and for Multnomah County,

in said State of Oregon, and that he was then by the laws of the State of Oregon, duly authorized and empowered to take and certify, under his Notarial Seal, acknowledgements to Deeds of Conveyance and Mortgages, and that his Certificate thereto is in due form of law and that full faith and credit are due to his official acts as such.

WITNESS MY HAND and the Great Seal of the State, at office in the City of Salem, State of Oregon, this nineteenth day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy.

(GREAT SEAL STATE OF OREGON) Sam'l. E. May, Secretary of State.

(United States Revenue Stamps, 5 cents, Cancelled)

Form M 44.

Received for record April 18, 1870.

STATE OF OREGON,)
) ss. No. 9564
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Co. to Milton S. Latham, et al, recorded in Book "K" page 727 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 5th day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk

Filed May 10, 1918.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 400

is a certified copy of an instrument of date March 28, 1871, between Milton S. Latham, Faxon D. Atherton and William Norris, trustees, parties of the first part, and The European and Oregon Land Company, party of the second part, and the Oregon and California Railroad Company, party of the third part, recorded at page 223, Book "N", of the Records of Deeds of Multnomah county, Oregon, and thereafter, about the same time, recorded in the Records of Deeds of the various counties of the State within which any portion of the granted lands were situated, which exhibit is as follows:

Book N, Page 223.

O. & C. R. R. Co., TO

EUROPEAN AND OREGON LAND CO.

THIS INDENTURE made and entered into at the City and County of San Francisco, State of California, this twenty-eighth day of March in the year of our Lord One Thousand Eight Hundred and Seventy-one between Milton S. Latham, Faxon D. Atherton

and *William* Norris, trustees, all of the City and County of San Francisco, parties of the first part, The European and Oregon Land Company, an incorporation, duly incorporated and organized under and pursuant to an act of the Legislature of the State of California approved the fourteenth day of April, One Thousand Eight Hundred and Fifty-three, entitled "An Act to provide for the formation of Corporations for certain purposes" and the acts supplementary thereto and amendatory thereof, party of the second part and the Oregon and California Rail Road Company a body corporate, organized at Portland in the State of Oregon, on the Seventeenth day of March, One Thousand Eight Hundred and Seventy, under an act of the legislature of the State of Oregon approved the fourteenth day of October One Thousand Eight Hundred and Sixty-two, entitled "An act providing for private corporations and the appropriation of private property therefor," and acts amendatory thereof and supplemental thereto, party of the third part Witnesseth:

WHEREAS, the said Oregon and California Railroad Company did on the fifteenth day of April in the year of Our Lord, One Thousand Eight Hundred and Seventy, duly make execute and deliver unto the said Milton S. Latham, Faxon D. Atherton and *William* Norris, its certain Indenture in writing under seal, bearing date on the last named day whereby the said Oregon and California Railroad Company as party of the first part therein, in consideration of certain premises in

said Indenture declared and expressed and in further consideration of One Dollar, the receipt whereof was therein acknowledged did duly grant, bargain, sell, assign, alien, set over, enfoeff, convey and confirm unto the said Wilton S. Latham, Faxon D. Atherton and *William* Norris parties of the second part therein, all and singular the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the Oregon Company by act of Congress approved the twenty-fifth day of July, in the year One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right, title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the said Oregon and California Railroad Company then had or owned or to which it was in anywise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the acts of Congress aforesaid, and also all further right, title, interest, claim, property and demand which the said Oregon and California Railroad Company might at any time thereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof, by virtue of any further compliance with the requirements of such acts of Congress by the said Oregon and

California Railroad Company. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said granted lands property and franchises and every part and parcel thereof unto the said Milton S. Latham, Faxon D. Atherton and *William* Norris and to their successors or successor and assigns forever: In trust, nevertheless for certain uses and purposes and upon certain conditions and covenants in said Indenture contained as by said Indenture or the record thereof in the Recorder of Deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said Records, reference thereto being had may more fully and at large appear. And Whereas among other conditions covenants and agreements in said Indenture contained and set forth, the said Milton S. Latham, Faxon D. Atherton and *William* Norris or their successors or successor and assigns by and with the consent of said Oregon and California Railroad Company, but not otherwise, were and are duly authorized, empowered and directed at any time before the maturing of the principal of certain bonds of the said Oregon and California Railroad Company in said Indenture mentioned and described to sell and dispose of all or any part or portion of the lands and franchises so granted as aforesaid, by such acts of Congress and in and by said Indenture conveyed to said trustees to such person or persons, firm or firms association or bodies corporate and for such price and upon such terms as the said Oregon and

California Railroad Company might by and through its President advise direct, instruct or agree to.

NOW THEREFORE, This Indenture Witnesseth: That the said Milton S. Latham Faxon D. Atherton and William Norris, Trustees, as aforesaid under and pursuant to the power and authority in them vested in and by the said Indenture first herein above referred to and in consideration of the premises and of the certain covenants and agreements hereinafter contained and set forth and to be performed and kept by the said European and Oregon Land Company and in consideration of the sum of one Dollar lawful money of the United States to them in hand paid by the said European and Oregon Land Company, the receipt whereof is hereby acknowledged and also in pursuance of the advice, direction, instruction and agreement in writing to that effect of the said Oregon and California Railroad Company, party of the third part by and through its president have granted, bargained, sold, assigned, aliened, set over, enfeoffed, conveyed and confirmed and by these presents do grant, bargain, sell, assign, alien, set over enfeoff convey and confirm unto the said European and Oregon Land Company party of the second part hereto; All the lands and franchises with their appurtenances lying and being in the State of Oregon granted or intended to be granted to the said Oregon Company by Act of Congress approved the twenty-fifth day of July One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Cen-

tral Pacific Railroad in California to Portland in Oregon," and acts supplemental thereto and amendatory thereof and also all the right title, interest, claim, property and demand whatsoever, both legal and equitable present and prospective, absolute and contingent which the parties of the first part hereto now have or hold or to which they may be in anywise entitled in and to any and all lands and franchises in the State of Oregon granted or intended to be granted to the said Oregon Company by the Acts of Congress aforesaid and also all future right, title, interest, claim, property and demand which the parties of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon or in any County thereof by virtue of any further compliance with the requirements of such Acts of Congress by the party of the third part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise belonging and being the same land, tenements, franchises, hereditaments and appurtenances granted, conveyed and assured unto the parties of the first part hereto by the Oregon and California Railroad Company by Indenture bearing date the fifteenth day of April One Thousand Eight Hundred and Seventy, as by said Indenture or the record thereof in the records and deeds in and for the County of Multnomah in the State of Oregon on pp 727 to 734 inclusive of Book K of said records, reference being thereunto had, may more fully and at large appear.

TO HAVE AND TO HOLD the said granted

lands, property and franchises and every part and parcel thereof unto the said European and Oregon Land Company party of the second part hereto and to its successors and assigns forever, subject, nevertheless, to the certain provisions and conditions in reference to delivery of possession of said lands and delivery of the surveys, plats and patents and other muniments of title to or effecting said lands to be hereafter issued by the United States to the said Oregon and California Railroad Company pursuant to law which are hereinafter mentioned and expressed And said parties of the first part and all and every person or persons whomsoever lawfully or equitably claiming any estate, right, title or interest of in and to the hereinbefore granted premises by, from or under them and each of them shall and will at any time or times hereafter upon the reasonable requests and at the proper costs and charges in the law of the said party of the second part or its successor or successors or assigns make, do and execute or cause to be made, done and executed all and every such further and lawful and reasonable acts conveyances and assurances in the law for the better and more effectually vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said party of the second part as by the said party of the second part or its successor or successors or the counsel learned in the law shall be reasonably devised, advised or required. And also that the said parties of the first part the above granted, bargained, sold and assigned premises and every part and parcel thereof with the

appurtenances thereof unto the said party of the second part, or its successor or successors and assigns, against the said parties of the first part and their successors and against all and every person and persons whomsoever lawfully claiming or to claim the same by, through or under them it shall and will warrant and by these presents forever defend. And in consideration of the premises, the said European and Oregon Land Company, party of the second part hereto have covenanted, promised, and agreed and doth hereby covenant, promise and agree to and with the said Milton S. Latham, Faxon D. Atherton and *William* Norris, trustees, as aforesaid, in manner following that is to say: The said party of the second part hereto shall and will on or before the first day of April in the year of Our Lord, One Thousand Eight Hundred and Eighty-nine, pay to said Milton S. Latham, Faxon D. Atherton and William Norris, trustees as aforesaid, the price or sum of one and one quarter dollars lawful money of the United States for each and every acre of said lands and premises hereby conveyed to the party of the second part be the same more or less.

It is further covenanted and agreed by the said parties of the first part that they will notify in writing the party of the second part at San Francisco from time to time as they receive the same that they are prepared to deliver to the party of the second part the plats or surveys of the lands and premises hereby sold or intended to be sold as the same may be hereafter segregated from the public domain and set apart to the Oregon

and California Railroad Company party of the third part hereto, pursuant to law and for the purposes mentioned in the said Act of Congress passed as aforesaid on the twenty-fifth day of July, One Thousand Eight Hundred and Sixty-six and the acts supplemental thereto and amendatory thereof and all such papers, documents and muniments of title hereafter to come to their possession relating to said lands and premises as may be necessary to enable the party of the second part to sell at the *the* same by good and sufficient description thereof. And it is also further stipulated, covenanted and agreed by and between the parties of the first and second parts hereto, that the said parties of the first part having notified in writing as aforesaid, the party of the second part at San Francisco, California, that they are prepared to deliver to the party of the second part any of the said surveys, plats, patents and other evidences and muniments of title relating to or designating said lands as the same may from time to time be issued by the United States to said Oregon and California Railroad Company under the acts of Congress already passed or which may hereafter be passed in aid therefor supplemental thereto, the said party of the second part at any time before the expiration of two years from the day of the receipt by said party of the second part of the said notice relating to said documentary evidence of location of and title to said lands, may and shall receive actual possession of said patents and of the lands therein described upon paying to the parties of the first part the said price of one and one quarter dollars per

acre of such lands, but without interest on the said price of the same for the said period of ten years. If, however, such lands shall for any cause be not all paid for within ten years from the time the said party of the second part shall be notified by the parties of the first part as aforesaid, that said surveys, plats, patents and other evidences and muniments of title are ready to be delivered by the said parties of the first part to the said party of the second part as aforesaid, then the parties of the first part shall charge and the party of the second part shall pay interest at the rate of six per cent per annum upon said purchase price of one and one quarter dollars per acre of said lands for the period after said ten years and up to and including said first day of April, One Thousand Eight Hundred and Eighty-nine, during which said lands shall not be paid for by the party of the second part as hereinbefore, provided it being the intent of this stipulation and covenant that the party of the second part shall have ten years within which to make payment for and take possession of or sell to others the lands hereby conveyed without paying interest on the said purchase price of said lands for any portion or the whole of that time, but that after said lands or any part thereof shall have been at the disposition of the party of the second part under the covenants of this Indenture for the term of two years it shall thereafter pay to the parties of the first part, interest at the rate of six per cent per annum on the purchase price of all the lands so at the disposition of the party of the second part which may not

for any reason have been paid for by said party of the second part within such period of two years. But the said surveys, plats, patents and all other evidences and muniments of title from the United States to said Oregon and California Railroad Company relating to said lands hereinbefore conveyed shall remain with, and the possession of the lands and premises therein described shall always remain in the said parties of the first part anything hereinafter contained to the contrary notwithstanding, until said party of the second part shall pay the parties of the first part for the same or such part thereof as it may from time to time desire to obtain possession of under this conveyance, the said price of one and one quarter dollars per acre of said lands and such rate of interest thereon as is hereinbefore provided for. It is further expressly covenanted and agreed by and between the parties hereto, each with the other, that in case the total amount of indebtedness of the party of the second part created under this Indenture shall at the time of the execution and delivery of these presents or at any further time exceed the amount of the capital stock of said party of the second part actually paid in, the parties of the first part in consideration of the premises and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged hereby covenant, promise and agree that they will and they do hereby remise release and discharge the trustee of the party of the second part under whose administration such excess may be or is hereby created, from all and every liability,

joint or several in this or either of their individual and private capacities to the parties of the first and their parts, for the amunt of such excess of said indebtedness over the amount of capital stock of the party of the second part actually paid in at the time of the execution and delivery of these presents and said parties of the first part for the consideration aroresaid, do hereby waive, surrender and abandon any and all claim, demand or right at law or in equity or existing or to exist by operation of the statute creating un*divied* and private liabilities of trustees of corporations organized under the laws of California, for debts or liabilities incurred in excess of the amount of capital stock actually paid in. And the said party of the third hath covenanted and agreed and doth hereby covenant and agree to and with the parties of the first part, and the party of the second part, that it has duly authorized, empowered, directed and required the said parties of the first part as trustees as aforesaid, to make, execute and deliver this Indenture to the said party of the second part in manner and form and upon the terms and conditions hereinbefore expressed; and the said party of the second part by and through its president, he being thereunto and for that purpose duly authorized and empowered this sale and conveyance and every part thereof hath fully and completely ratified, approved, confirmed and by these presents doth fully ratify, approve, and confirm the same.

IN WITNESS WHEREOF the said parties of

the first part have hereunto set their respective hands and seals: and the said party of the second part hath also caused these presents to be subscribed by its president and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees, the day and year first above written and the said party of the third part hath also caused the same to be subscribed by its President and its corporate seal to be hereto affixed and attested by its Secretary by resolution of its Board of Trustees the day and year first above written.

Milton S. Latham, (Seal)

Faxon D. Atherton, (Seal)

Wm. Norris. (Seal)

Signed, sealed and delivered

first being duly stamped.

Wm. H. S. Barnes,

F. J. Thibault.

THE EUROPEAN AND OREGON LAND COMPANY

(Seal of E and O Land Company) By Jos. S. Wilson. Pres't

(Rev Stamps 50c cancelled)

Attest: Francis Avery,
Secretary, E and O. L. Co.

THE OREGON AND CALIFORNIA RAILROAD COMPANY

(SEAL OF O & C R. R. COMPANY) By Ben Holladay, President.

Attest: A. G. Cunningham,
Secretary, O and C. R. R. Co.

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

I, F. J. Thibault, a commissioner for the State of Oregon, duly commissioned by the Executive authority and qualified under and by virtue of the laws thereof to take the acknowledgements and proof of the execution of deeds and other instruments in writing under seal to be used or recorded in the State of Oregon and to administer oaths affirmations & c, residing in the city and county of San Francisco and State of California do certify that on the twenty eighth day of March, A. D. 1871, before me personally appeared in the said city and county of San Francisco and State of California, Milton S. Latham, Faxon D. Atherton and *William* Norris whose names are subscribed to the foregoing instrument as parties thereto of the first part who are to me personally known to be the individuals described in and who executed the said instrument as parties of the first part therein and said Milton S. Latham, Faxon D. Atherton and William Norris, severally duly acknowledged to me that they executed the said annexed

instrument freely and voluntarily and for the uses and purposes therein mentioned and also that on the day and year aforesaid and at the place aforesaid, personally appeared Jos. S. Wilson, president of the European and Oregon Land Company and Francis Avery, the Secretary of the said Company, to me severally and personally known as the president and secretary of said Company and as the real persons by whom and in whose names as such president and Secretary the foregoing instrument was subscribed and executed and they severally acknowledged before me that they severally subscribed and executed the foregoing instrument for and in behalf of and as the act and deed of said European and Oreogn Land Company, party of the second part thereto for the uses and purposes therein expressed under express authority of resolutions of its Board of Directors duly passed and adopted and the said Jos. S. Wilson, president as aforesaid, and said Francis Avery, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and directions of its Board of Directors and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such commis-

sioner, at my office in the city and county of San Francisco and State of California, this twentieth day of March in the year of our Lord, One Thousand Eight Hundred and Seventy-one.

F. J. Thibault,
Commissioner for Oregon, in California.

(COMMISSIONERS OF DEEDS SEAL)

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, that on this first day of April, A. D. 1871, before me the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and qualified and duly authorized by the laws of the State of Oregon to take the acknowledgements and proof of the execution of deeds and other instruments in writing, under seal and to administer oaths and affirmations & c, personally came Ben Holladay, president and A. G. Cunningham, Secretary of the Oregon and California Railroad Company of Portland, Oregon, a corporation duly incorporated under the laws of the State of Oregon, to me severally and personally known to be the president and secretary of said Company and to be the identical persons described in and by whom and in whose names as such president and secretary the foregoing instrument was subscribed and executed by the said Oregon and California Railroad Company party of the third part and they severally acknowledged before me that they severally sub-

scribed and executed the foregoing instrument for and on behalf of and as the act and deed of said Oregon and California Railroad Company, party of the third part thereto for the uses and purposes therein expressed under express authority of resolutions of the Board of Directors of said Company, duly passed and adopted and the said Ben Holladay, president as aforesaid, and said A. G. Cunningham, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: that he knows the Corporate seal of said Company and that the seal affixed to the foregoing instrument is the corporate seal of said Company and was so affixed by the express order and direction of the Board of Directors of said Company and under authority of resolutions duly passed and adopted by said Board and duly entered upon the minutes of its proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as such Notary at my office in the City of Portland, County of Multnomah and State of Oregon, this 1st day of April, in the year of Our Lord One Thousand Eight Hundred and Seventy-one.

(5 cent Rev stamp cancelled) Geo. E. Cole,
Notary Public.

(NOTARIAL SEAL)

STATE OF OREGON,)
) ss.
Department of State.)

I, S. F. Chadwick, secretary of the State of Oregon, do hereby certify that Geo. E. Cole, whose name is subscribed to the foregoing and annexed certificate of acknowledgement to Indenture was at the time of signing the same, to-wit: on 1st day of April, A. D. One Thousand Eight Hundred and Seventy-one a duly commissioned qualified and acting Notary Public in and for the County of Multnomah, in said State of Oregon, duly authorized and empowered to take and certify under his Notarial Seal acknowledgements of deeds of conveyance and Indentures and that full faith and credit are due to his official acts as such.

WITNESS MY HAND AND the Great Seal of *of* State at office in the City of Salem, State of Oregon, this third day of April, in the year of our Lord, One Thousand Eight Hundred and Seventy-one.

S. E. Chadwick,

Secretary of the State of Oregon.

(GREAT SEAL OF THE
STATE OF OREGON)

Reed for Record, April 4th, 1871.

STATE OF OREGON,)
)ss. No. 9557
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, O & C R. R. Co. to European and Oregon Land Co., recorded in Book N page 223 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May A. D. 1913.

(Seal) Jno. B. Coffey, County Clerk.

Filed May 10, 1913.

A. M. CANNON,
Clerk U. S. District Court.

DEFENDANTS' EXHIBIT 401

is a certified copy of an agreement executed July 25, 1874, by and between The European and Oregon Land Company, party of the first part, and Milton S. Latham, Faxon D. Atherton, William Norris, parties of the second part, Henry Villard and others, parties of the third part, the Oregon and California Railroad Company, party of the fourth part, and Ben Holladay,

party of the fifth part, recorded at page 264, Book "Z" of the Records of Deeds for Multnomah county, Oregon, on January 4, 1875, and thereafter, about the same time, recorded in the Records of Deeds of all other counties in which any part of said granted lands were situated, and which exhibit is as follows:
Deed Book Z, 264.

AGREEMENT, BETWEEN THE EUROPEAN AND OREGON LAND COMPANY AND MILTON S. LATHAM, FAXON D. ATHERTON AND WM. NORRIS, TRUSTEES AND OTHERS.

AN AGREEMENT, made and entered into this twenty-fifth day of July, Eighteen Hundred and Seventy-four, by and between The European and Oregon Land Company, a body politic and corporate under the laws of California, party of the first part; Milton S. Latham, Faxon D. Atherton and William Norris, all of the State of California, trustees, parties of the second part; Henry Villard, of the City of Heidelberg, Grand Duchy of Baden, Heinrich, Hohenemser of the City of Frankfort-on-the-main, Prussia, director of the Deuthsche Vereins bank in the same city, Aron Niederhofheim, of the city of Frankfort-on-the-Main, Director of the branch office at Frankfort-on-the-Main of the Bank fuer Handel and Industrie at Darmstadt, Julius

Schmidt, banker of the city of Frankfort-on-the-Main, Adolph Otto, doctor of law and attorney at law of the City of Heilbronn, Kingdom of Wurtemberg, Michael Benjamin, of the City of Munich, Kingdom of Bavaria, director of the Baierische Wechsler bank in the same city, Carl Staehelin-Bucknor of the City of Basle, Switzerland, partner in the house of Messrs Iselin & Staehelin in the same city, F. S. Van Nierop of the city of Amsterdam, Kingdom of the Netherlands, director of the Amsterdam'sche Bank of the same city; Wilhelm Koester, of the city of Mannheim, Grand Duchy of Baden, banker, partner in the house of Koester & Co., in the same city by the said Henry Villard, their attorney in fact, parties of the third part; The Oregon & California Railroad Company, a body politic and corporate under the laws of Oregon, parties of the fourth part; and Ben Holladay, of the State of Oregon, (who is president of the last named Company, and the owner of a majority of its capital stock) party of the fifth part;

WITNESSETH: WHEREAS, the said party of the fourth part, heretofore, to-wit: on the fifteenth day of April, Eighteen Hundred and Seventy, made its certain Indenture of mortgage of that date of certain of its property therein described, to said Faxon D. Atherton and Milton S. Latham as trustees, to secure the payment of certain of its bonds, which mortgage was duly recorded in the office for the record of mortgages in the county of Multnomah, State of Oregon, in Book

K of Mortgages, on pages seven hundred and forty five and following, to which mortgage and the record thereof direct reference is made. And WHEREAS, at the date last aforesaid, said party of the fourth part for the purpose of creating a sinking fund for the payment of the said bonds conveyed by its certain deed of that date to the parties of the second part all the lands and franchises with their appurtenances lying and being in the State of Oregon, granted or intended to be granted, to the Oregon Company by Act of Congress, approved July twenty-fifth, A. D. One Thousand Eight Hundred and Sixty-six, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the central Pacific Railroad in California to Portland in Oregon," and Acts supplemental thereto and amendatory thereof, and also, all the right, title, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part hereto now has, or owns or to which it is in any way entitled in and to any and all lands and franchises in the State of Oregon granted, or intended to be granted to the Oregon Company by Acts of Congress aforesaid, and also all future right, title, interest, claim, property and demand, which the party of the first part hereto may at any time hereafter have, own or acquire to any lands lying and being anywhere in the State of Oregon, or in any county thereof, by virtue of any further compliance with the requirements of such Acts of Congress by the party of the first part hereto; together with all

and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, in trust nevertheless, for the uses and purposes specified in said deed of trust, which said deed was duly recorded in Book K of record of deeds of said last named county, on pages seven hundred and twenty seven and following, to which deed and the record thereof direct reference is made. And WHEREAS, said parties of the second part in part execution of their said trust, did on the twenty-eighth day of March, Eighteen Hundred and Seventy-one, made a certain deed and agreement of sale and conveyance with said party of the first part (which was mutually executed by said parties) conveying to said party of the first part the lands and property lastly above described, upon certain terms in said agreement of sale and conveyance described, which said deed is recorded in said county last named in Book N of Records of Deeds, Pg 223 of said county, to which deed and record, direct reference is heremade.

AND WHEREAS, said agreement last aforesaid remains only in part executed, and comparatively but a small portion of said lands have been sold by said parties of the first part; and the parties of the third part who are the owners and possessors of a majority of said bonds referred to in the above mentioned deeds of mortgage and trust, together with said party of the fourth part deem it to be for the interest of the said party of the fourth part as well as for the whole body of said bondholders, that said sale so far as may be should be cancel*e*d, and said land be reconveyed, upon equitable terms as herein provided.

AND WHEREAS, said party of the first part has spent large sums of money in causing plans written descriptions and maps of the land in said land grant to be made and circulated, and in advertising the said lands and in maintaining agencies for the sale thereof, and in other ways which will be of great benefits to all parties interested in the sale thereof. And WHEREAS, all parties hereto are interested in adjusting the matters aforesaid, and in securing to the bond-holders the fullest security to be obtained from the said lands so conveyed in trust to said parties of the second part, And WHEREAS, the parties hereto have agreed upon such cancellation and rescision of said agreement between said parties of the first and second part and a restoration of said parties to their respective original positions, so far as may be.

NOW THEREFORE, the party of the first part in consideration of the premises and the sum of one dollar to it in hand paid by said parties of the second part (the receipt whereof is hereby acknowledged) has remised, released, sold and assigned and by these presents does remise, release, sell, assign, convey and confirm (with certain exceptions hereinafter named) to said parties of the second part and their heirs, successors and assigns forever, all the land and franchises, with all rights and privileges, easements and appurtenances thereunto belonging, lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by Act of Congress, approved July twenty-five, Eighteen Hundred and Sixty-six, en-

titled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon, and Acts supplemental thereto, and amendatory thereof," and also (with certain exceptions hereinafter named) all the contracts, rights, title, interest, claim, property and demand, whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the party of the first part heretofore had or owned, or to which it became in any way entitled under and by virtue of said deed from the party of the second part, dated March twenty-eight, A. D. Eighteen Hundred and Seventy-one, or of any other deeds or contracts; if such there be, or of any acts heretofore done by the party of the fourth part, in compliance with said acts of Congress to the lands and property named in said deed, and to all lands, rights, property and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the Acts of Congress aforesaid; and also (with certain exceptions hereinafter stated) all future right, title, interest, claim, property and demand which the party of the first part may at any time hereafter have, own or acquire in, or to any lands, rights or property in the State of Oregon or any county thereof by virtue of any further compliance with the requirements of said Acts of Congress by the party of the fourth part, or its grantors; and also all maps, plans, office furniture, leases, contracts, bonds, notes, mortgages and other securities and property, real and personal, and all acounts, moneys, claims, demands,

rights and privileges, legal or equitable which the said party of the first part now had or owns or to which it is in any way entitled, saving and excepting, nevertheless, out of the premises, all money or property that the parties of the first part may procure, get or receive as indemnity and reimbursement as herein provided, and also expressly saving and excepting, nevertheless, out of the *pe*mises and from the operation of these presents, the corporate rights and franchise of the said party of the first part, and all lands and rights heretofore conveyed or granted by it, being the premises named in certain deeds as follows, to-wit.

	Acres.
Lot number one (1) Section eleven (11) township two (2) south of range two (2) west, containing	10.68
Northwest quarter (¼) of section seventeen (17) and northwest quarter (¼) of southwest quarter (¼) of section thirteen (13) township two (2) south range four (4) east containing	200.00
West half (½) of southwest quarter (¼) and northeast quarter (¼) of the northeast quarter (¼) of section five (5) township two (2) south range four (4) west containing,	119.48
Lots one (1) and eight (8) of section nine (9) township two (2) south range one (1) east containing	21.92

Lots one (1) and (2) of section nineteen (19) township two (2) south range four east, containing 46.36

Lots three (3) and eight (8) of section twenty seven (27) township thirteen (13) south range five (5) west, containing 19.91

Southwest quarter (¼) of southeast quarter (¼) and southeast quarter (¼) of southwest quarter (¼) of section eleven (11) township two (2) south range three (3) west, containing 80.00

Lot number one (1) of northeast quarter (¼) of section fifteen (15) township three (3) south range one (1) east, containing 22.24

Lot number two (2) of section thirty one (31) township three (3) south range four (4) east, containing 28.60

Northeast quarter (¼) of section thirteen (13) and southeast quarter (¼) of northeast quarter (¼) of section thirty one (31) township three (3) South range two (2) east, containing 200.00

Northeast quarter (¼) of northeast quarter (¼) of section seven (7) township three (3) south range one (1) west, containing 40.00

Southeast quarter (¼) of section nineteen and northwest quarter (¼) of northeast quarter (¼) and southeast quarter (¼) of northwest quarter (¼) of section twenty nine (29) township four (4) south range four (4) east, containing	240.00
Lot one (1) of section twenty seven (27) and lot one (1) of section twenty nine (29) township four (4) south range one (1) west, containing	5.69
Northeast quarter (¼) of northwest quarter (¼) of section three (3) township four (4) south range three (3) east, containing	40.20
Lot two (2) of section one (1) and southwest quarter (¼) of northwest quarter (¼) of section eleven (11) and lot six (6) of section fifteen (15) township four (4) south range five (5) west, containing	95.10
Southeast quarter (¼) of northeast quarter (¼) of section nineteen (19) township four (4) south range four (4) east, containing	40.00
Lot one (1) of section nine (9) and lot one (1) of section nineteen (19) and lots three (3) and four (4) of section twenty-five (25) township five (5) south range four (4) west, containing	26.73

Lots three (3) and four (4) of section one (1) and southwest quarter ¼) of southeast quarter (¼) of section nine (9) and lot two (2) of section twenty nine (29) township five (5) south range six (6) west, containing	96.14
Lot two (2) of section seven (7) township six (6) south range five (5) west, containing	2.44
Lot four (4) of section twenty three (23) township six (6) south range seven (7) west, containing	15.14
Lot three (3) of section twenty nine (29) and lot two (2) of section seventeen (17) township thirteen (13) south range five (5) west, containing	26.20
Lot eight (8) and northeast quarter (¼) of the northeast quarter (¼) of section twenty three (23) township fourteen (14) south range three (3) west, containing	43.69
Lots one (1) and two (2) of section twenty nine (29) township two (2) south range one (1) east, containing	57.66
Southeast quarter (¼) of southeast quarter (¼) of section five (5) township three (3) south range one (1) east, containing	40.00

Southwest quarter (¼) of southwest quarter and northwest quarter (¼) of northwest quarter (¼) of section one (1) township (3) south range two (2) east, containing	78.52
Northwest quarter (¼) of southeast quarter (¼) of section thirteen (13) township two (2) east, containing	40.00
Northeast quarter (¼) of southeast quarter (¼) of section thirteen (13) township two (2) south range three (3) east, containing	40.00
Lot five (5) of section twenty five (25) township two (2) south range three (3) east, containing	31.98
Lot three (3) of section five (5) township three (3) south range three (3) east, containing	17.25
Lot two (2) of section thirteen (13) township three (3) south range three (3) east, containing	21.56
Lot seven (7) of section thirteen (13) township three (3) south range three (3) east, containing	47.29
Lot one (1) of section seventeen (17) township three (3) south range three (3) east, containing	38.86

Southwest quarter (¼) of northwest quarter (¼) of section seventeen (17) township three (3) south range three (3) east, containing 40.00

Northeast quarter (¼) of northeast quarter (¼) of section one (1) township four . . south range three (3) east, containing 40.09

Northwest quarter (¼) of northeast quarter (¼) of section one (1) township four (4) south range three (3) east, containing 40.08

North half (½) of southwest quarter (¼) of *of* section seven (7) township one (1) south range four (4) east, containing 80.15

North half (½) of the southwest quarter (¼) of section one (1) township three (3) south range four (4) east, containing 80.00

North half (½) of northwest quarter (¼) of section (1) township three (3) south range four (4) east, containing 82.75

Southwest quarter (¼) of northwest quarter (¼) and northwest quarter (¼) of southwest quarter (½) of section eleven (11) township three (3) south range four (4) east, containing 80.00

South half (½) of southeast quarter (¼) of section thirty one (31) township one (1) south range one (1) west, containing 80.00

South half (½) of northeast quarter (¼) of section five (5) township two (2) south range one (1) west, containing 80.00

North half (½) of southeast quarter (¼) of section thirteen (13) township two (2) south range one (1) west, containing 80.00

Southeast quarter (¼) of southwest quarter (¼) of section one (1) township three (3) south range one (1) west, containing 40.00

Southeast quarter (¼) and south half (½) of northeast quarter (¼) of section twenty five (25) township one (1) south range two (2) west, containing 240.00

Northwest quarter (¼) of northeast quarter (¼) and lots three (3) and four (4) of section twenty seven (27) township one (1) south range two (2) west, containing 107.07

Lot one (1) of section five (5) township two (2) south range two (2) west, containing 13.00

Southwest quarter (¼) of northwest quarter (¼) of section seven (7) township two (2) south range two (2) west, containing 41.96

Southeast quarter (¼) of northwest quarter (¼) of section seven (7) township two (2) south range two (2) west, containing 40.00

Lots three (3) and four (4) of section nine (9) township two (2) south range two (2) west, containing	19.60
Northeast quarter (1/4) of northeast quarter (1/4) of section twenty three (23) township two (2) south range two (2) west, containing	40.00
West half (1/2) of southwest (1/4) of section one (1) township two (2) south range three (3) west, containing	80.00
Northeast quarter (1/4) of southeast quarter (1/4) of section three (3) township two (2) south range three (3) west, containing	40.00
Northwest quarter (1/4) of southwest quarter (1/4) of section eleven (11) township two (2) south range three (3) west, containing	40.00
Lot five (5) of section twenty one (21) township two (2) south range three (3) west, containing	30.86
Northwest quarter (1/4) of southeast quarter (1/4) of section twenty three (23) township (2) south range three (3) west, containing	40.00
Lot two (2) of section eleven (11) township one (1) south range two (2) east, containing	37.66
Northeast quarter (1/4) of northeast quarter (1/4) of section fifteen (15) township one (1) south range two (2) east, containing	40.00

Southwest quarter (¼) of northeast quarter (¼) of section five (5) township one (1) south range three (3) east, containing 40.00

Northwest quarter (¼) and lot two (2) of section five (5) township one (1) south range three (3) east, containing 165.92

North half (½) of northeast quarter (¼) of section seven (7) township one (1) south range three (3) east, containing 80.00

Lot six (6) of section thirteen (13) township three (3) south range three (3) east, containing 28.80

South half (½) of northwest quarter (¼) of section one (1) township three (3) south range four (4) east, containing 80.00

Lots one (1) and two (2) of section three (3) township two (2) south range one (1) west, containing 40.00

Northwest quarter (¼) of southeast quarter (¼) and northeast quarter (¼) of southwest quarter (¼) of section seven (7) township two (2) south range one (1) west, containing 80.00

Lots six (6) and eight (8) of section seventeen (17) township one (1) south range two (2) west, containing 88.50

Lots three (3) and four (4) of section thirty three (33) township one (1) south range two (2) west, containing 55.66

East half (½) of southeast quarter (¼) of section eleven (11) township two (2) south range three (3) west, containing 80.00

Lot one (1) of section twenty five (25) township three (3) south range four (4) west, containing 6.96

Lot eight (8) of section three (3) township five (5) south range three (3) west, containing 10.78

But, as to all these excepted parcels, the party of the first part hereby grants and conveys all the remaining rights, title and interest therein, if any there be, legal or equitable. Meaning and intendeding hereby among other things, to reconvey to the party of the second part, everything whatsoever, excepting as aforesaid, heretofore conveyed or granted by said party of the second part to said party of the first part thereof, and fully to reinstate the party of the second part, so far as may be done, and with exceptions aforesaid in all the property, franchises, ownership, rights and privileges touching the premises which it had before the said deed was made by them to the party of the first part.

TO HAVE AND TO HOLD the granted premises unto the said party of the second part, and their

heirs, successors and assigns forever, but in trust nevertheless, for the same uses and purposes and upon the same conditions and covenants named in said deed of trust from the party of the fourth part to the party of the second part, dated April fifteenth, Eighteen Hundred and Seventy. And the parties of the second part hereby accept said conveyance and agree to hold the said land upon the trusts hereinbefore referred to. But this conveyance is made upon the express condition that the parties of the second part agree and they do hereby agree to and with the parties of the first part, to fulfil and perform all the contracts for sales or conveyancing of any of said lands heretofore made by said party of the first part with the purchaser and do further agree to reimburse the party of the first part or cause it to be reimbursed in full out of the net proceeds of lands coming into their hands for all outlays or disbursements in its said business; and do further agree to release and discharge the parties of the first part from the payment of any of the sums of money or the performance of any of the matters and things on its part to be made, done and performed as set forth in said conveyance and agreement of the said twenty-eighth day of March, Eighteen Hundred and Seventy one, and to release and indemnify the party of the first part or cause it to be indemnified when and to the extent that said parties of the second part may have in their hands any net proceeds from the sale of lands, from and against all contracts or liabilities which it may be under, relative to the granted premises, and in all

other matters for and against which said party of the first part equitably and in good conscience has a right to be reimbursed, indemnified and protected, such indemnity and repayment shall also be reduced to the extent that any one or more of the stockholders shall waive, or has waived his right to any share or interest therein, in favor of the bondholders; and all rights of parties within the said party of the first part, as among themselves, or in relation to the Company shall be adjusted as they and said Company may agree.

For the ascertaining of the payment and indemnity to be allowed by said party of the second part, to the party of the first part, it is agreed that on motion of either of the parties of the second or third parts, three arbitrators shall be appointed one to be chosen by each of said last named two parties, and the third by the two so chosen; and in case either party or arbitrator, as the case may be, having been fairly notified in writing for seven days, of the choice of the other party or arbitrator, as the case may be, shall fail to notify the other party or arbitrator, as the case may be, of his own choice, then the principal consular officer of the German Empire, at San Francisco, shall upon being notified of such failure, be authorized tc fill the vacancy forthwith, and immediate notice shall be given of his action to both of said parties or arbitrators, as the case may be. The decision of the said three arbitrators, or in case of disagreement of a majority of them, shall be final; and said arbirators, in making their award, shall not be bound

by the strict rules of law or equity, as administered in Courts, but shall make a fair and equitable adjustment.

The party of the third part may, if it sees fit, and by consent of the arbitrators, cause any part of the personal property hereby conveyed, to be returned to the parties of the first part in lieu of, or in lieu of making compensation. And the said parties of the third part do hereby covenant and agree to and with said parties of the first part, in consideration of the premises and the sum of one dollar to them in hand paid by said party of the first part, the receipt whereof is hereby acknowledged, that they, the parties of the first part, will indemnify, save and keep harmless the said party of the first part of and from all loss and damage by reason of the execution of these presents by the party of the first part, and against any and all claims against said party of the first part, for the purchase money by them to have been paid unto and by virtue of said agreement between said parties of the first and second parts, dated the twenty eighth day of March, Eighteen Hundred and Seventy-one.

IN WITNESS WHEREOF, The said parties of the second, third and fifth parts have hereunto set their hands and seals, the parties of the second and fifth parts and said Henry Villard in person and the others of said attorney in parties of the third part by their said fact, Henry Villard; and the parties of the first and fourth parts, corporations as aforesaid, have caused these presents to be signed by their respective presidents

and secretaries, and their corporate seals respectively to be hereunto affixed, all in quadruplicate, the day and year first above written.

J. W. Ames,

President of the European and Oregon Land Company

Pelham W. Ames,

Secretary of the European and Oregon Land Company,

(Seal of the European & Oregon Land Co.)

In presence of:

F. J. Thibault,

John H. Winkins.

(This agreement shall not take effect as to the parties of the first and second parts until ratified by the constituents of the said Henry Villard.

J. W. Ames,

Pres E and O Land Co.

July 25th, 1874.)

Trustees.—(Milton S. Latham, (Seal)
(F. D. Atherton, (Seal)
(Wm. Norris, (Seal)

(.....Henry Villard, (Seal)

(Heinrich Hohenemser, (Seal)
(By Henry Villard, his attorney in fact,

(Aron Neiderhofheim, (Seal)
(By Henry Villard, his attorney in fact,

(Julius Schmidt, (Seal)
(By Henry Villard, his attorney in fact,

(Adolph Otto, (Seal)
(By Henry Villard, his attorney in fact,

(Michael Benjamin, (Seal)
(By Henry Villard, his attorney in fact,

(Carl Staehlin-Bucknor, (Seal)
(By Henry Villard, his attorney in fact,

(F. S. Van Nierop, (Seal)
(By Henry Villard, his attorney in fact,

(Wilhelm Koester, (Seal)
(By Henry Villard, his attorney in fact,

(Ben Holladay,
(President of the Oregon and California
(Railroad Company.

(A. G. Cunningham,
(Secretary of the Oregon and California
(Railroad Company.

(Ben Holladay, (Seal)

.....

In Presence of
J. N. Dolph,
R. H. Fowler.

(SEAL OF THE OREGON & CALIFORNIA RAILROAD CO.)

STATE OF CALIFORNIA,)
) ss.
City and County of San Francisco.)

BE IT REMEMBERED, that on the thirty first day of July, A. D. 1874, before me, the undersigned,

a Commissioner of deeds for the State of Oregon, residing at San Francisco, California, duly commissioned, sworn and fully qualified personally came J. W. Ames, President of the European and Oregon Land Company, and Pelham W. Ames, Secretary of the European and Oregon Land Company whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said European and Oregon Land Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me, that he, the said J. W. Ames, as president, and he, the said Pelham W. Ames, as secretary of the European and Oregon Land Company, executed the foregoing instrument as and for the act and deed of the said European and Oregon Land Company freely and voluntarily and for the uses and purposes therein mentioned, and he, the said Pelham W. Ames, being by me duly sworn did depose and say that he is the secretary of the European and Oregon Land Company and resides at San Francisco, California; that he is the legal custodian of, and is acquainted with and has in his possession, the corporate seal of the European and Oregon Land Company, that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him, as secretary of said Company, on the thirty first day of July, A. D. 1874, by order of the Board of directors of said Company and that he signed his name as secretary thereto by the like order of the Board of Directors of said company.

And be it further remembered that on this thirty first day of July, 1874, before me personally appeared Milton S. Latham, Faxon D. Atherton and Wm. Norris, all to me personally known to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as Commissioner of Deeds for the State of Oregon at my office in San Francisco, California, the date herein first above written.

F. J. Thibault,

(COMMISSIONER'S SEAL)

Commissioner for Oregon in California.

STATE OF OREGON,)
) ss.
County of Multnomah.)

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me, the undersigned, Notary Public within and for said county of Multnomah and State of Oregon, appeared the within named Henry Villard, in his own proper person and also the within named Heinrich Hohenemser, by his attorney in fact, the said Henry Villard, and also the within named Aron Niederhofheim, by his attorney in fact the said Henry Villard, and also the within named Julius Schmidt, by his attorney in fact, the said Henry Villard, the within

named Adolph Otto, by his attorney in fact, the said Henry Villard, and also the within named Michael Benjamin, by his attorney in fact, the said Henry Villard, and also the within named Carl Staehelin-Bucknor, by his attorney in fact, the said Henry Villard, and also the within named F. S. Van Nierop, by his attorney in fact, the said Henry Villard, and also the within named Wilhelm Koester, by his attorney in fact, the said Henry Villard, to me personally known to be the individual described in and who executed the above and foregoing instrument of writing, as well in his own right and on his own behalf, as also for and on behalf of the said Heinrich Hohenemser, Aron Niederhofheim, Julius Schmidt, Adolf Otto, Michael Benjamin, Carl Staehelin-Bucknor, F. S. Van Nierop and Wilhelm Koester and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand as such Notary Public and affixed my notarial seal on this the day and year last above written.

Joseph Simon,

(NOTARIAL SEAL)

Notary Public, Oregon.

STATE OF OREGON,)
) ss.
County of Multnomah,)

BE IT REMEMBERED, That on this 25th day of July, A. D. 1874, before me the undersigned, a Notary Public in and for the said County of Multnomah and State of Oregon, duly commissioned and qualified,

personally came Ben Holladay, president of the Oregon and California Railroad Company, and A. G. Cunningham secretary of the Oregon and California Railroad Company, whose names are subscribed to the foregoing instrument as parties thereto and as the president and secretary of said Oregon and California Railroad Company, both personally known to me to be the individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, said Ben Holladay, as president, and he, the said A. G. Cunningham as secretary of the Oregon and California Railroad Company executed the foregoing instrument as and for the act and deed of the said Oregon and California Railroad Company, freely and voluntarily and for the uses and purposes therein mentioned; and he the said A. G. Cunningham, being by me duly sworn, did depose and say that he is the secretary of the Oregon and California Railroad Company, and resides at East Portland, Multnomah County, Oregon, that he is the legal custodian of, and is acquainted with and has in his possession the corporate seal of the Oregon and California Railroad Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as secretary of said Company, on the 25th day of July, A. D. 1874, by order of the Board of Directors of said Company, and that he signed his name as secretary thereto, by the like order of the Board of Directors of said Company; and the said Ben Holladay one of the parties to said instrument acknowledged to me that he individually

executed the same as a party thereto, freely and voluntarily and for the uses and purposes therein specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Portland, Oregon, the date first above written.

Joseph Simon,

(NOTARIAL SEAL)

Notary Public, Oregon.

STATE OF OREGON,)
) ss.
Department of State.)

I, STEPHEN F. CHADWICK, Secretary of the State of Oregon, do hereby certify that Joseph Simon, whose name is subscribed to the foregoing and annexed certificate of acknowledgment to said Agreement, was at the time of taking such acknowledgment, and signing such certificate, to-wit: on the 25th day of July, A. D. 1874, a duly commissioned, qualified and acting Notary Public, in and for the County of Multnomah and State of Oregon, and that he was by the laws of the State of Oregon, duly authorized and empowered to take and certify, under his Notarial Seal, acknowledgments to deeds, mortgages and other instruments of writing and that his signature to such certificate is genuine, also his notarial seal, and that full faith and credit are due to his official acts.

And I do further certify that F. J. Thibault is a duly commissioned, sworn and fully qualified commissioner of

deeds for the State of Oregon, residing at San Francisco, in the State of California, that he is by the laws of the State of Oregon, duly authorized and empowered to take and certify under his official seal, acknowledgments to deeds, conveyances and other instruments of writing; and that full faith and credit are due to his official acts as commissioner of deeds for the state of Oregon.

WITNESS my hand and the seal of the State, at my office in the City of Salem, State of Oregon, this 25th day of July, A. D. 1874.

S. F. Chadwick,
Secretary of the State of Oregon.

(SEAL OF THE STATE
OF OREGON.)

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, parties to the above and foregoing contract and instrument of writing, entered into and executed by us and by and through our said attorney in fact, Henry Villard, do hereby ratify and fully confirm, under our hands and seals, the act and deed of our said attorney in fact, in executing said contract and writing, and in entering into and executing the several covenants and agreements therein contained, as fully and completely to all intents and purposes as if the same had been done and executed by us in person, and under our own proper hands and seals. This done in pursuance and fulfillment of the condition and restriction providing for such ratification contained in our

letters of attorney, appointing and authorizing him the said Henry Villard, as such our attorney in fact, for us and in our name, place and stead to assent and agree to enter into and execute the said instrument of writing and the covenants and agreements therein contained.

WITNESS our hands and seals this twenty-sixth day of September, A. D. 1874.

H. Hohenemser,	(Seal)
A. Niederhofheim,	(Seal)
J. Schmidt,	(Seal)
Dr. Adolf Otto	(Seal)
F. S. Van Nierop,	(Seal)
Wilh Koester,	(Seal)
M. Benjamin,	(Seal)
Carl Staehelin-Bucknor	(Seal)

Die worstchenden von mir Notar und den beiden zengen volzogenen unterschiften und Siegel des Herrn Heinrich Hohenemser Diretors der Deutschen vereins Bank dahier, des Herrn Aron Niederhofheim Von Standes der filials der Bank fur Handel und Industrie dahier, des Herrn Julius Schmidt Kaufmoouns dahier, des Herrn Dr. Frederic Salomon Nierop, Directors der Amsterdam'chen Bank zur Amsterdam, des Herrn Wilhelm Koster in Ferina Koster & Co. Zu Mannheim, des Herrn Michael Benjamin Directors der Baierischen Wechsler Bank zu Meinchsen, und des Herrn Carl Staechelin-Bucknor in Fiama Iselin & Staehelin zu Basel, werden hierdurct amtlict als aecht beglanbigt

wobei, dieselben angaben, dass tie obigen vertrag zu dem darin angegebenen Zwecke unterzeick net hatten. Frankfort Or/M der sicks und zwanzigster September achtzenn hundred vier und siebenzig.

Peter Ullman als zenge,
Joham Kattenwick als zenge,
Dr. Carl Otto Orthenberger.

(Notarial Seal) Notar.

pier obigo
einschathenez der
zwei worte "zu Basel"
Peter Ullman als zenge,
Johann Kattenwick als zenge.
Dr. Carl Otto Orthenberger,
Notar
(Notarial Seal)

No. 1040
Fees pd $2-00/100

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
FRANKFORT-ON-THE-MAIN, GERMANY.

I, A. L. Wolff, Vice Consul-General of the United States of America at Frankfort-on-the-Main, do hereby certify that Dr. Carl Orthenberger, whose name is subscribed to the paper hereunto annexed, was at the time of subscribing the same, Notary Public at Frankfort-O/M Kingdom of Prussia, duly commissioned and that full faith and confidence are due to his acts as such.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the Consulate-General at Frankfort-on-the-Main, the 11th day of November in the year 1874 and of the Independence of the United States of America, the 99th.

A. S. Wolff,

(CONSULATE SEAL) Vice Consul-General

Received for Record, Jan 4th, 1875.
9104.

Deed Book 246, Page 468.

O. C. R. R.

TO

PORTLAND.

Deed No. 2046. Issued for Contract No. 1804.

THIS INDENTURE, Made this third day of July, A. D. 1893, between the Oregon and California Railroad Company duly incorporated under the laws of the State of Oregon, party of the first part and the City of Portland, party of the second part, WITNESSETH:

THAT WHEREAS, the party of the first part did on the sixteenth day of February A. D. 1883, by its contract Numbered 1804, sell and agree to convey unto A. G. Cunningham the land hereinafter described, for the sum and price of One Thousand Nine Hundred and Fifty Eight 82/100 (1958-82/100) Dollars, to be paid as in said contract provided; and

WHEREAS, said purchase price has been fully paid to the party of the first part and said The City of Portland, as assignee of said A. G. Cunningham, has thereby become entitled to a conveyance from the party of the first part of all the right, title and interest which it, the party of the first part has or may hereafter acquire from the United States in and to said land; and

WHEREAS, by the judgment and decree of the Circuit Court of the State of Oregon for the County of Multnomah, rendered on the 12th day of July, A.D. 1890 in a suit in equity in which James Steel was plaintiff and said Oregon and California Railroad Company and the Union Trust Company, a corporation, incorporated under the laws of the State of New York, were defendants and appeared in said suit, it was found adjudged and decreed by said Court that lands which had been sold by the party of the first part prior to the 12th day of May, A. D. 1887, are not included in or covered by *by* that certain deed of trust executed by the said Oregon and California Railroad Company, to said Union Trust Company, on the 1st day of July, A. D. 1887, which trust deed is duly recorded on the record of Mortgages for said Counties of Multnomah and Clackamas in the State of Oregon, and it was further decreed that said trust deed is not a lien upon such lands, and that said Union Trust Company has no right under the terms of said trust deed, to or any interest in the money received by said Oregon and California Railroad Company for lands so sold by it prior to said 12th day of May, A. D. 1887,

which judgment and decree is now in full force and effect, and is also recorded in the record of mortgages for said Counties of Multnomah and Clackamas.

NOW THEREFORE, in consideration of the premises and of the payment to the party of the first part of the said sum of One Thousand Nine Hundred and Fifty-eight 82/100 (1958-82/100) Dollars, the receipt whereof is hereby acknowledged, the said Oregon and California Railroad Company, party of the first part, does hereby grant and convey unto said party of the second part, its successors and assigns, all of the said land which is known and described as follows, to-wit: The south half of the northeast quarter and the south half of section twenty-five (25), the north half of the northeast quarter and the northwest quarter of section thirty-five (35), all in township one (1) south range five (5) east; also the south half of section nineteen (19) township one (1) south range six (6) east Willamette Meridian, containing according to the United States Survey thereof, Nine Hundred and Fifty-five 52/100 (955-52/100) acres, be the same more or less.

TO HOLD THE SAID PREMISES, with the appurtenances thereto unto the said party of the second part its successors and assigns forever, reserving however, a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company, or any of its branches is or shall be located upon the prem-

ises; and the right to take all water needed for the operating of said railroad; and also reserving and excepting from said described premises so much and such parts thereof as may be mineral lands other than coal and iron. And the said party of the second part does hereby, for its self and its successors and assigns covenant with the said Oregon and California Railroad Company, its successors and assigns, that it will erect and maintain on the boundary line or boundary lines, between said premises and such right of way, a good, lawful and substantial fence sufficient to turn stock.

IN WITNESS WHEREOF, The said party of the first part has caused these presents to be sealed with its seal and executed by its 2nd Vice President and Secretary and the party of the second part has herein set hand and seal the day and year first above written.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

(Seal) By R. Koehler, 2nd Vice-President.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,

(Seal) By Geo. H. Andrews, Secretary.

(CORPORATE SEAL)

In presence of:
David Loring,
F. G. Ewart. (Seal)

STATE OF OREGON,)
)ss.
County of Multnomah,)

BE IT REMEMBERED, That on this third day of July, A. D. 1893, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and qualified, personally came R. Koehler, 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews, secretary of said Company, whose names are subscribed to the foregoing instrument as 2nd vice president and secretary of said Company both personally known to me to be the same individuals named and described in and who executed the said instrument and they severally acknowledged to me that he, the said R. Koehler as 2nd vice president and he, the said Geo. H. Andrews, as secretary of the said Oregon and California Railroad Company, executed the foregoing instrument as and for the act and deed of said corporation for the uses and purposes therein mentioned. And the said Geo. H. Andrews being by me duly sworn did depose and say that he is the secretary of the Oregon and California Railroad Company and resides at Portland, Multnomah County, Oregon; that he is the legal custodian and is acquainted with and has in his possession the corporate seal of said Company; that the seal affixed to the foregoing instrument as the seal of said Company, is such corporate seal; that the same was so affixed by him as secretary of said Company on the 3rd day of July, A. D. 1893, by order of the Board of

Directors of said Company, and that he signed his name thereto by the like order of the Board of Directors of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Rec'd for record,
Dec. 31st, 1897, at 10:50 a. m.

David Loring,
(NOTARIAL SEAL) Notary Public for Oregon.

No. 9555

STATE OF OREGON,)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Agreement, between the European and Oregon Land Company and Milton S. Latham, et al., has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Agreement as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of May, A. D. 1918.

JNO. B. COFFEY,
(SEAL) County Clerk.

Filed May 10, 1913.

A. M. CANNON,
Clerk of District Court.

DEFENDANTS' EXHIBIT 402

is a certified copy of a quit-claim deed executed by the Oregon and California Railroad Company and Union Trust Company to the City of Portland, dated March 14, 1892, recorded page 203, Book 179 of the Records of Deeds of Multnomah County, Oregon, July 26, 1892, and is as follows:

Book 179 Page 203

Deed No. 995

Oregon & Calif. R. R. Co. to City of Portland.

QUITCLAIM Deed No. 1719 Issued for Contract 3827

This Indenture made this 14th day of March A. D. 1892 between the Oregon and California Railroad, a Corporation duly incorporated under the laws of the State of Oregon party of the first part. The Union Trust Company of New York a corporation created and existing under and by virtue of the laws of the State of New York party of the second part and the City of Portland hereinafter called the purchaser, party of the third part.

Witnesseth: That in consideration of the sum of .....Dollars paid to the party of the first part and the sum of Seven hundred and sixty (760) dollars paid to the party of the second part by direction of the party of the first part as per terms of deed of trust by party of the first part to party of the second part of date July 1st, 1887 The Oregon and California Railroad Company doth hereby remise, release and quitclaim unto said purchaser his heirs and assigns all of the right, title and interest which it the said Oregon and California Railroad Company now has or owns or may hereafter obtain or acquire in and to the hereinafter described lands and the said Union Trust Company of New York, doth hereby release and confirm unto said purchaser his heirs and assigns the said lands which are described as follows: to-wit:

The north west quarter of the South West quarter and the South west quarter of the South East quarter of section twenty-three (23) township One (1) South range four (4) East and the north half of the South West quarter of section five (5) Township two (2) South range five (5) East Willamette Meridian containing according to the United States survey thereof one hundred and sixty (160) acres be the same more or less being understood to be part of the land granted by the United States to the said Oregon and California Railroad Company and embraced within the terms of and conveyed by a certain deed of trust executed by the party of the first part to the party of the second part,

as Trustee and bearing date July 1st, A. D. 1887.

To hold the said premises with the appurtenances thereto unto the said purchaser, his heirs and assigns, forever freed and discharged from the lien powers, and trusts of said deed of trust or mortgage of July 1st, 1887 reserving however a strip of land one hundred feet wide to be used by the Oregon and California Railroad Company for right of way and other railroad purposes when the railroad of said Oregon and California Railroad Company or any of its branches is or shall be located upon the premises and the right to take, all water needed for the operating of said railroad, and also reserving and excepting from said described premises so much and such parts thereof as or may be mineral lands other than coal or iron. And the said purchaser does hereby for himself and his heirs and assigns covenant with the said Oregon and California Railroad Company its successors and assigns that he will erect and maintain on the boundary line or boundary lines between said premises and such right of way a good and lawful and substantial fence sufficient to turn stock.

In witness whereof the said parties of the first and second parts, have caused these presents to be sealed with their respective seals, and executed by their respective Presidents and Secretaries and the party of the third part has hereunto set his hand and seal the day and year first above written.

The Oregon and California Railroad Company
By R. Koehler, 2nd Vice President.

The Oregon and California Railroad Company
By Geo. H. Andrews, Secretary.

TheUnion Trust Company of New York.
By Jas. H. Ogilvie, V President.

TheUnion Trust Company of New York.
By A. W. Kelly, Secretary. (Seal)

In presence of:
DavidLoring
R. McMurphy
J. A. Shaughnessy
H. W. Ramsay

(Corporate Seal)

STATE OF OREGON,)
) ss.
County of Multnomah,)

Be it remembered that on this 14th day of March A D 1892 before me the undersigned a Notary Public in and for the said County and State duly commissioned and qualified personally came R. Koehler 2nd Vice President of the Oregon and California Railroad Company and Geo. H. Andrews Secretary of said Company whose names are subscribed to the foregoing instrument as 2nd Vice President and Secretary of said Company both personally known to me to be the said individuals named and described in and who executed the said instrument and they severally acknowledged to me that he the said R. Koehler as 2nd Vice President and he the said Geo. H. Andrews as Secretary of the said Ore-

gon and California Railroad Company executed the foregoing instrument as and for the act and deed of said Corporation for the uses and purposes therein mentioned and he the said Geo. H. Andrews being by me duly sworn did depose and say that he is the Secretary of the Oregon and California Railroad Company and resides at Portland Multnomah County Oregon that he is the legal custodian of and is acquainted with and has in his possession the corporate seal of said Company, that the seal affixed to the foregoing instrument as the seal of said Company is such corporate seal; that the same was so affixed by him as Secretary of said Company on the 14th day of March A D 1892 by order of the Board of Directors of said Company, and that he signed his name thereto by the like order of said Board of Directors of said Company.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Notarial Seal) David Loring
Notary Public for Oregon.

STATE OF NEW YORK)
) ss.
City and County of New York)

Be it remembered that on this 22nd day of April A D One thousand and eight hundred and ninety-two before me a Commissioner of the State of Oregon in the State of New York residing in said City of New York, personally came Jas. H. Ogilvie Vice President

of the Union Trust Company of New York the corporation described in the foregoing instrument as the party of the second part thereto and who is personally known to me and he being by me duly sworn did depose and say that he is and at the time of the execution of said instrument was, the Vice President and that A. W. Kelley is and then was the Secretary of the said Company that he knew the corporate seal of said Company and that the seal affixed to the foregoing instrument as such is said corporate seal; that the said seal was affixed by authority of the Board of Directors of said Company and that he Jas. H. Ogilvie as Vice President aforesaid signed and that the said A. W. Kelley as Secretary aforesaid attested the said instrument by like authority. And the said Jas. H. Ogilvie Vice President as aforesaid acknowledged the execution of said instrument as the act and deed of said The Union Trust Company of New York for the purposes therein expressed.

In witness whereof I have hereunto subscribed my name and affixed my official seal at my office in the City of New York the day and year in this certificate first above written.

(Notarial Seal) William Shillaber,

Commissioner for the State of Oregon in the State of New York.

Received for record July 26th, 1892 at 2:35 P. M.

No. 9575

STATE OF OREGON,)
) ss.
County of Multnomah,)

I, JOHN B. COFFEY, County Clerk and Clerk of the County Court of the County of Multnomah and State of Oregon, do hereby certify that the foregoing copy of Deed, Oregon and California Railroad Company to City of Portland, recorded in Book 179 page 203 Record of Deeds, has been compared by me with the original, and that it is a correct transcript therefrom, and of the whole of such original Deed as the same appears of record in my office and in my custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 6th day of May, A. D. 1918.

JNO. B. COFFEY,

(Seal) County Clerk.

Certified copy of Deed Oregon & California Railroad Company to City of Portland.

Filed May 10, 1918.

A. M. CANNON,
Clerk District Court.

UNNUMBERED EXHIBITS

Letter Benjamin Harris Brewster, Attorney General, to Hon. H. M. Teller, Secretary of the Interior, dated June 15, 1882, being found at pages 35 to 39, inclusive, of Executive Document No. 29, 47th Congress,

2nd Session, in answer to a letter of January 5th submitting questions arising upon an application of the New Orleans Pacific Railway Company for certain lands claimed under land grant made to the New Orleans, Baton Rouge & Vicksburg R. R. Co. by act of March 3, 1871. (See page 2512, Vol. 5, Printed Record.)

Statement from corporate records of Oregon Central Railroad Company of Salem, Oregon Central Railroad Company of Portland, and Oregon & California Railroad Company, compiled by Mr. McAllaster. (See page 2034, Vol 4, Printed Record.)

Patent issued by the United States to the Oregon & California Railroad Company, which includes the lands described in contract No. 5394, being the third item to Exhibit No. 9 to the answer. (See pages 2045 et seq., Vol. 4, Printed Record.)

Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side). (See pages 2544 et seq., Vol. 5.)

Form of Coupon to Bond above described. (See page 2548, Vol. 5.)

First Mortgage Bond of the Oregon & California R. R. Co. of date April 15, 1870. (See page 2548, Vol. 5, Printed Record.)

Whereupon, the appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union

Trust Company, individually and as trustee, now present and tender to the court their statement of the evidence prepared and to be filed herein under and pursuant to Rule 75 of Rules of Practice for the Courts of Equity of the United States, and respectfully ask the court to approve the same and to make such order in relation thereto as is required by law and said Rule.

WM. D. FENTON,
P. F. DUNNE,
WM. D. FENTON,

Attorneys for Appellants Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

DOLPH, MALLORY SIMON & GEARIN,
JOHN M. GEARIN,

Attorneys for Appellant Union Trust Company individually and as Trustee.

Whereupon, on March 4, 1914, said court made and entered in said cause an order approving said Statement of the Evidence as follows:

(TITLE)

Now at this day this cause came on to be heard upon the application of the appellants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company, individually and as trustee, defendants, for an order approving the Statement of the Evidence prepared and tendered by the appellants and now tendered to be filed herein under Rule 75, Rules of Practice for the Courts of Equity of the United States, the appellants appearing by their attorneys Wm. D. Fenton and John M. Gearin, and the complainant appearing by its attorneys B. D. Townsend and Fred C. Rabb, Special Assistants to the Attorney General of the United States, and it appearing to the Court that the parties were unable to agree as to the reduction of so much of said testimony to narrative form in the Statement of the Evidence as it set out by question and answer therein, and it appearing to the Court that the evidence in said cause has been reduced and stated in narrative form in said Statement of the Evidence other than the said evidence set out by question and answer, and it further appearing to the Court that in its judgment the testimony of the witnesses thus set out by question and answer should be reproduced in the exact words as reported and stated in said Statement of the Evidence, and it further appearing to the Court that the Statement of the Evidence as thus prepared is true, complete and properly prepared, as provided by said Rule 75 of the Rules

of Practice for the Courts of Equity of the United States, and there is no objection to the approval of said Statement of the Evidence by the Court;

IT IS ORDERED that the said Statement of the Evidence now tendered to be filed and thus prepared be and the same is hereby approved and the same is now directed to be filed in the Clerk's office of this court as of this date, and become a part of the record for the purposes of the appeal.

CHARLES E. WOLVERTON,
Judge.

(Endorsed) Filed March 4th, 1914.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to-wit: on the 29th day of August, 1913, there was duly filed in said Court the petition for appeal of Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, Union Trust Company, individually and as trustee, defendants, John L. Snyder and others, defendants-crosscomplainants, and Frank Terrace and others, interveners-defendants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES

for the District of Oregon

Ninth Circuit

NO. 3340 IN EQUITY

United States of America, Complainant,

vs.

Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee, and Union Trust Company, individually and as Trustee, Defendants.

JOHN L. SNYDER, Juliaus F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter and S. Shryock.

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderee, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler and Marvin Martin.

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman,

Defendants, Cross-Complainants.

WILLIAM F. SLAUGHTER, Peter Merges, Oscar Thompson, H. H. Zaff, N. Zaff, C. M. Cutbirth, G. T. Buckner, W. L. Buckner, B. O. Slagle, Mary M. Leitzel, M. E. Buckner, J. J. Utzinger, Morton Nelson, Pauline Jacobs, Peter Grime, K. M. Birkeland, Owne Alopaeus, Charles Wirkkala, J. Gribler, Sven A. Grime, Nels P. Sorenson, John Lundgren, Lowell A. Young, John Patterson, Alice Perry, Thomas J. Flippin, Samuel Sonneland, Frank E. Young, R. R. Giltner, Albert Brix, Chester D. Sewall, P. J. Brix, Russell E. Sewall, A. A. Murphy, Charles E. Hays, I. L. Randall, H. A. Munson, Henry Burboch, John H. Carlson, James Brown, Charles W. Mayger, James D. Young,

Edward F. Cooper, Anton Peterson, John F. Edwards, Edward Edwards, Alexander Opsal, Paul Anderson Bae, P. Jacobs, Julius T. Jacobs, Charles Ottason, Kate K. Spowers, George Spowers, Daniel Spowers, Abraham L. Yornall, Josie Powers, John Graber, Fred Anderson, Walter Shay, Josephine Anderson, Louis Osberg, Laronard Osberg, Eli Bangs, Duncan Scott, William H. Short, George A. Mottman, June Moltman, Leitha Galliher, Nellie Galliher, Sarah Galliher, Robert S. Moseley, John T. Ross, Harriet A. Hunter, George W. Hunter, Darwin E. Yoran, Frank Hampton, Rhoda Hampton, Mary A. Griffin, Frank N. Smith, Layton Smith, Marsh Martin, Clay Zumwalt, Green Zumwalt, Benjamin H. Dunlap, William H. Alexander, Jake F. Berger, Warren G. Thatcher, J. Edgar Furnish, Tina A. Furnish, James O. Smith, William Andrews, Mae Larimer, William F. Gilstrap, Aaron Rathmell, F. G. Blake, Mathias Gillespie, Jeter Virgin, James N. Randle, Louisa Randle, Absalom C. Woodcock, William Polders, Mary E. Cowan, Eugene Ward, Nellie Smith, Rena Ward, Aaron C. Rathmell, Sarah L. Rathmell, Walter N. McCornack, Walter W. McCornack, Edwin A. McCornack, William R. Bell, Laura Martin, Elizabeth Andrews, H. H. Hunter, Herbert Beadle, Rodney Scott, Robert P. Allison, Clemons E. Carlile, Percy H. McDonald, Hattie Spencer, Francis Schank, Elizabeth Schank, Joseph W. Kays, James R. Deal, Fred W. Carruth, J. H. Roediger, Arthur Hotchkiss, Jr., M. R. Clark, Moses N. Wagner, V. J. Warren, E. N. Moseley, Frank S. Lydick, A. A. Thome,

John Decker, George G. Gross, George Walter Griffin, Mary F. Berger, J. F. McDonald, James J. McCormack, Frank W. Osburn, Charles P. Ferguson, Eugene R. Pierce, Ray Littlefield, Frederick G. Young, A. Tirell, John B. Hiltibrand, Chancey W. Butler, Junius E. Ward, Joseph D. Butler, William J. Rhynsburger, Francis P. Young, Charles F. Littlefield, Martha Littlefield, Araminta H. Gross, Rock S. Bryson, Henry T. Withrow, Martin T. Mulkey, W. W. Branstetter, Peter Whitaker, Milton Nichols, George Nichols, Mercy S. Wheeler, Eliza L. Spencer, Jennie L. Spencer, Clara F. Spencer, Jefferson D. Spencer, Henry A. Tromp, Septimus S. Spencer, John M. Wells, James McCallum, Marceline Whittaker, T. J. Harris, L. M. Raabe, Fred J. Maly, J. D. Howell, William J. Maly, Clarence Hougen, Daniel E. Eyre, John Kloster, Carl L. Vickerman, William Dickerson, F. G. Graham, George W. Moffitt, W. S. Wickersham, W. B. Wickersham, W. R. Petrie, Sarah Wickham, P. C. Stevenson, F. J. Fahy, Edward Kammerer, John C. Moomaw, Angus McLean, D. J. Ferriter, Clarance Griffin, Joseph E. McCoy, Joseph McCoy, B. N. Harrington, W. G. Erickson, Valentin Sorensen, B. E. Cook, S. C. Cook, H. O. Bolduan, Albert O. Monson, Louis S. Perkins, Joseph Ogulin, C. Y. Lowe, B. G. Schuyler, J. D. Boobar, B. F. Seymour, G. H. Smith, Alexander Padore, H. L. Houston, John D. Burns, Thomas E. Thompson, Edward H. Hurless, Bert Folsom, S. Graham, John Yates, N. McNair, Ernest E. Snow, Otto H. Gerdes, Christian Vorland, H. Renhardt, P. N. Kulseth, R. D. Mc-

Nair, David Tozier, Edward Maag, C. F. Foncanon, Thomas H. Hanby, Carl H. Olson, Maud E. Costello, G. W. Wilson, John Sinclair, M. B. Corthell, Kate N. Harmon, Kate M. Harmon, George W. Harmon, T. H. Mehl, A. F. Caxmenon, A. F. Carmenon, E. A. Costello, Edith M. Cameron, Wilbert Shook, William M. Mitchell, A. H. Haude, Bengt Johnson, E. E. Hampton, George Belloni, Fred Slagle, A. F. Linegar, Charles Moomaw, William Schroeder, Samuel Nosler, Charles McCabe, Elmer Kilpolrick, Bessie M. Cox, M. O'Rurke, M. O'Rourke, Frank G. Scribner, C. Hoeppner, E. A. Cox, William Schroeder, J. H. Fitzgerald, Christina Hanson, John C. Strong, Louis Strong, Reuben F. Tate, C. J. Tibbitts, Conrad Tauscher, Joseph A. Tauscher, Nik Auderer, Ben Orstad, J. R. Herron, Berndt F. Bengston, Fred Gage, C. E. Edwards, Paul A. Sandberg, Z. T. Thomas, Jean A. Houston, Hiram Edwards, Alfred Rodine, A. B. Campbell, Carrie Rodine, Charles Rodine, Rudolph Tauscher, Paul E. Tauscher, Margaret Murphy, Wenzel A. Tauscher, D. George Frissendahl, L. B. Judson, Edward Joehnk, George Seelig, Ira Chapman, Albert Seelig, John W. Butler, Robert Marsden, Edwin McArthur, Guy Gould, Henry Wells, C. A. Metlin, Emil Ogren, Samuel A. Conro, James M. Conro, Otho L. Hopson, Jacob W. Williams, L. R. Robertson, Charles Schappers, August Peterson, Ida Rodine, Effie Rodine, Jesse J. Ott, B. F. Willey, Jorden Schappers, Herman Remaine, William Remaine, J. M. Upton, E. E. Straw, Sarah Edmunds, W. B. Farrin, Frank C. Farrin, Jesse G. Farrin, George

N. Farrin, E. L. C. Farrin, John McMahon, Henry Michelbrink, Albert N. Gould, Algred Tyberg, Alfred Tyberg, Luther H. Pace, John Michelbrink, John Muchelbring, Samuel Ott, Isaac N. Price, Richard J. Henry, J. J. Kibble, Joseph Schappers, W. H. Riley, Christopher Krugg, James C. Days, John Schappers, R. A. Clarke, J. B. Castle, Clarence A. Gould, R. L. Martin, Joseph Whitaker, Albert Sitzloff, W. W. Wyatt, A. A. Adams, J. C. Parker, C. L. Flynn, Louis Hatley, William Brackinreed, D. Cook, F. G. Larson, W. G. Warnick, August LaLonde, J. F. Boncutter, Alfred McIntosh, Oluf Peterson, Robert F. Estis, James B. Abrams, A. C. Blake, Edward McAlpine, Louis Barr, M. N. Hawley, A. B. Siemons, H. A. Reasoner, R. H. Siemons, George A. Siemons, Fred C. Siemons, Harry J. Siemons, Curtis E. Abrams, Emma Morrison, R. L. Barr, Thomas C. Linkin, Isaac W. Powell, T. L. Harris, John Maag, Henry G. Raimann, Henry J. Raimann, Daniel Slentz, William A. Neal, Don L. Greene, George L. Mathews, R. T. Knowlton, A. T. Morrison, George T. Moulton, C. E. Schroeder, P. G. Schroeder, Samuel C. Braden, Ralph M. Knight, George Lainger, Thomas E. Davis, Ernest A. Michel, Raymond E. Baker, Albert L. Volkmer, Solomon C. Endicott, W. J. Moon, Amos L. Nosler, Jesse W. Hall, Claude H. Nosler, S. C. Bronson, Binger E. Hermann, Robert P. Carman, Henry B. Steward, Maxwell H. Dement, August H. Bender, Charles A. Pendleton, Rebecca E. Clarke, Julius Frazer, Thomas Armstrong, D. E. Buchanan, O. E. Buchanan, E. E. Buchanan, E. M. Furman, F. W.

Pett, Reason C. Endicott, John Ruppert, John Bretz, Harry J. Winsten, H. A. Featherman, E. A. Hannah, Walter W. Kroger, Adolphus A. Rounds, George A. Wilson, Philip Angell, Max Wittman, Minnie Burns, Clara J. McCoy, Alex Hanson, A. C. Case, E. Knippenberg, Bennie Severson, William Whobrey, William McNair, David McNair, Willis Whobrey, Gustav S. Breuer, Henry G. Volkmar, Kenneth E. Hannah, B. Ranum, Jay L. Smith, John Gorwell, George W. Scott, Otto N. Draves, John C. Schliem, W. V. Laird, Herbert Foss, Vernon L. Scott, J. L. Minder, Franklin S. Reeve, A. J. Meachan, L. Wm. Foss, Verner Barker, C. O. Dryden, E. C. Barker, James Richmond, Levi Foss, Nels O. Monson, Andrew Minder, Thurm Craigo, Ernest E. Remund, S. L. Remund, F. W. Stowell, C. B. Rockney, T. A. Young, Edward A. Minder, Clayton A. Ruckel, Witalis Johnson, John Nocker, John Mocker, F. G. Trollier, Paul F. Shaw, Levi Smith, Edward J. Moores, Carl August Almquist, N. A. Miller, Louis Kipka, Theodore Weisner, Gilbert Hanson, Edward J. Reimann, August Jensen, Fred Melson, Fred Nelson, Edward A. Benson, Carl R. Hillstrom, Charles Swenston, W. H. Rees, Gustav Despiegler, John Hopp, A. P. Buchanan, Thomas Fagan, W. G. Congdon, William Virgin, Ernest L. Hulburt, Ira Flagstead, Arthur D. Tupper, L. Q. Huey, William H. Hulburt, Henry Ebinger, Amel Running, Susie E. Fickes, Albert Anderson, Albert Running, Severin Anderson, John A. Krhoun, Wm. G. Manning, Wm. F. Manning, E. Running, J. F.

Forsyth, David Ebinger, Jr., Arne Running, Christine A. Sterns, John Leake, George F. Haehnel, Jacob H. Conrad, Charles Anderson, Arthur Anderson, Christian Addison, Sven C. Johnson, Ida L. Hyatt, W. Blankenberg, Ernest Matzke, D. G. Gibson, D. W. Gibson, George B. Adams, Otto Bergman, O. L. Nosler, J. E. Slocum, Earnest Folsom, P. J. Peralta, George Folsom, R. R. Pounder, S. L. Curry, John A. Nordeen, Charles Fickes, John Feschler, F. T. Desmond, C. H. Chelson, William Thring, O. Kregnes, S. E. Block, George H. Schulenberg, Herbert W. Shaw, Per Johnsen, John W. Anderson, Albert Hutchinson, Field, C. V. Johnson, J. C. Simpson, C. W. Kenkle, S. J. Keezel, C. M. Minton, A. L. Pugsley, A. W. Pugsley, E. E. Wilson, W. E. Allen, H. W. Conger, Guy Frink, J. H. Daniel, A. J. Johnson, Willis Vidito, V. A. Vidito, A. M. Taylor, W. H. Guinn, C. E. Banton, A. H. Buckingham, W. D. Barclay, G. W. Coon, G. W. Humphrey, George R. Hall, Jr., G. E. Lilly, J. S. Oakes, E. L. Oakes, B. W. Porter, P. R. Starr, V M. Woodcock, C. L. Beach, John Beach, W. S. Linnville, Philo T. Starr, Edwin N. Starr, Wilbur F. Starr, Wade Hinton, Amy Hinton, Ivan Rickard, J. Rickard, Lida Davidson, Pearl Persinger, Claude I. Starr, William A. Schmidt, Glenn W. Large, Thomas Large, Thomas J. Large, Stephen O. Rice, Thomas H. C. Brasfield, Joseph H. Dawson, John C. Davis, Leslie B. Kent, Victor H. Kent, Harvey G. Pugh, Ernest G. Pugh, Cloud H. Davidson, E. D. Farwell, Charles A. Pugh, George W. Barcus,

M. H. Bauer, J. R. Buckingham, Walter Barton, M. C. Starr, L. J. McNair, Charles S. Williams, J. J. Kenney, Chancey I. Barclay, T. M. Coon, C. E. Dinges, A. F. Oakes, C. H. Woodcock, John A. McBride, G. G. Horning, W. K. Taylor, John Withycombe, G. A. Clark, S. A. King, Sarah M. Hawley, Arthur W. Hawley, Jessie Dale Perrin, T. L. Blackledge, J. H. Edwards, Walter Poole, O. J. Blackledge, J. P. Gragg, D. V. Gragg, Ivan Hawley, H. C. Hinton, Ivan Hinton, G. H. Hibbs, Charles Henry Perrin, F. B. Conner, Jacob Edison, John Willbanks, M. C. Miller and Arthur Persinger.

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core and Edgar C. Holladay.

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

MILO F. DENNIS and Leopold H. Dietz.

FRANK TERRACE, Andrew C. Anderson, P. J. Applegate, Mary E. Anery, George Anderson, Chas. B. Abbott, Agnes Aamodt, Chas. H. Anderson, Harry Armstrong, Emil Affeldt, Clara Abbott, Ales Aker, Knut S. Aker, Margaret S. Armstrong, Andrew G. Anderson, Augusta Anderson, Julius W. Augustine, Edith Theresa Anderson, George T. Atteberry, G. A. Actzel, Asa M. Akin, George E. Adams, Elizabeth Austin, Ralph O. Austin, H. Theodore Ahrens, James M. Adams, William Anshutz, John S. Anderson, Axel

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Everett L. Smith, Frank Pakiser, Mary A. Golob, Joseph Ziegan, Frank P. Rathbone, Emily D. Rathbone, Albert Swanson, Edward S. Osborne, Mattie E. White, Jacob Siskar, Joseph Siskar, Fred Miller, John Larsell, Otto Lorenz, Joseph H. Ruddock, A. M. Drum, R. E. Vaughn, Joseph Cassidy, Vina M. Segerkrantz, Ethel M. Thornhill, William Christenson, Mary L. Christenson, Daniel N. Brown, William Heitmann, W. R. Flynn, J. Andrews, A. Andrews, Nellie Seblish, Nellie Seblist, Harry G. Seblish, Harry G. Seblist, Harry Andrews, Charles F. Nelson, Shirley M. Banthan, Shirley M. Bantham, J. Andrews, Jr., Sam Bullatt, R. T. Weirr, R. F. Weirr, Mary A. Nelson, Isaac Robert Gildea, Mrs. Clara L. Smith, John Johnson, J. T. Kepple, A. Garton, Sophia Johnson, F. C. Mills, P. N. Bourdon, F. W. Heide, G. E. Steelman, Frank Steelman, F. I. Payne, John Felix Nissley, W. P. Miller, W. R. Newman, William C. Metzger, Enoch A. Barker, Katherine Millard, Annie M. Daly, Rose M. Daly, George M. Strode, Ernest C. Beihl, Richard Greenwood, T. E. Olson, Matthew S. Jordan, Edward Dahlke, Edward Dahkle, Jos. T. Kaelin, G. Grunder, Mrs. Jessie Klinskey, Fred Klinskey, George Sinclair, E. Workman, C. M. Nelson, Kort Johnson, Henriette Rahrmann, T. W. Ashby, J. H. Johnson, J. S. Green, Andrew N. Mikkelsen, Frances E. Alford, James N. Kidd, Bertha Norcross, James Carroll, Ben Vanderkniter, Frank Albert, Anna Augusta Nelson, Ann M. Karney, Mrs. N. Stegin, R. E. Whitcomb, J. A. Springston, Mary J. Skidmore, Lucy Springston, B. Stegin,

Miss Susan Skidmore, H. J. Chapman, John W. Skidmore, H. C. Wilson, Geo. W. Skidmore, C. W. Hoyt, Etta M. Gillette, John Vanderkinter, G. M. Fiske, Carl Belohlav, Carl Belohlar, Orland M. Gillette, P. L. West, Walter Cramer, John Stenger, M. B. Case, G. H. Unger, W. F. Zeck, John Brandt, A. W. Ball, R. M. Taylor, Edith E. Hurly, Marrie H. Smith, W. S. Gasaway, Edna Spencer Shade, Walter Matthews, Nye N. Rambo, J. N. Prutzman, Charles E. Shade, Casper Sossong, Diedrich G. Logeman, Philip J. Dielman, Stephen T. Stuver, J. C. Wheeler, Joseph Bossi, M. E. Ball, Alfred Nordland, J. E. Ball, Lottie Crampton, G. W. Hart, D. A. Masterman, T. Hope, Fred Belohelan, John F. Martyer, Geo. L. Viscoute, Lillie Skidmore, H. A. Shaw, Parker Adams, Charles C. Ray, Joseph Crone, Mrs. M. J. Hewitt, A. F. Davis, Florence A. Brock, J. J. Foltz, C. E. Whiting, Chas. Putaturo, W. C. Hendrickson, Nelson R. Kyser, Philip Amo Ruso, Richard Hoard, Hans T. Hoff, Chas. Putaturo, Laura Dillor, William D. Birks, Perry Smith, Charles Johnson, Chester C. Foreman, Edward W. Soar, Herman Schroeder, Rhoderick D. Lytle, S. R. James, W. H. Dillon, Daisy B. Daly, Lissie Phelps, Theodore Hoff, Frank C. Daly, Wm. H. Sullivan, M. J. Sullivan, Robert A. Hutchison, J. W. Beckley, Otillie A. Beckley, Charles K. Bennie, Joseph W. Mitchell, Alice L. Carroll, Mary J. Walker, Charles Leondor, Charles Londor, John E. Daly, Belle Bozarth, Frank Goldynski, Ed Edner, Catherine Harvey, Charles Daly, Amy Deacon, F. W. G. Sutherland, Pearl Daly, J. Cranens, H. Gunderson,

Miles D. Jameson, Grace Cone, Fred Woodhouse, Emma L. Newman, Emma L. Neuman, J. J. Hughes, Mrs. N. A. Pillsbury, Nora A. Pillsbury, J. A. W. Nelson, H. H. Pernoll, Daniel J. O'Shea, J. F. Quann, Niels Peter Christensen, Ida M. Jamison, William P. Courtney, Ernest R. Goldepp, Ernest G. Goldepp, Alton B. O'Brien, R. H. Angel, Edna Smith, Alex Bosko, Eugene C. Birke, Lula Dempsey, Thomas Pognoszewski, J. Birks, Roland H. Birks, Aron D. Winner, William Nagle, Eugene Raisig, Lillian J. DeKeator, Thomas Storey, Henry Harbecks, Minnie Arnsbury, W. E. Payne, Frank Closner, Charles E. Arnsbury, Mabel E. Payne, Abe Davidson, Hugh A. Galbraith, T. V. Dempsey, Tracy Newman, Henry M. Stanley, Mary Allison, John G. Berg, Roswell G. Hibbard, Robert Daly, Frank B. Sibley, Robert Shelly, Albert Bozarth, Peter Stine, Nettie L. Robinson, Estella A. Robinson, Allison Davis, Alice Kinney, William Engels, Samantha J. Robinson, Albert A. Beihl, John C. Kinny, S. Ford Robinson, Regina May Davis, R. G. Robinson, Frank Federer, E. B. Federer, Joe Godlenski, Jr., Joe Godlenski, Enga Matilda Lean, J. Edwin Fults, J. F. Davis, Kinney D. Speer, H. C. Abbott, Ada V. Moreley, William Waugaman, Raymond Phelps, M. L. Zimmerman, Charles A. Bonnett, J. L. Shaffer, Frank L. Sadler, William W. Reiter, I. W. Scherich, N. G. Secord, P. G. Phelps, Celia Trainer, Annie Trainer, Bernard Trainor, Addie L. Grant, Fred Grant, E. J. Sidey, George Treimer, Albert Bosma, E. A. Nordling, Elizabeth E. Zahn, Laurell Augusta, A. C. Hanson, J. D.

Huntly, C. H. Cummings, E. G. Henkel, Carl S. Johnson, Charles H. Olney, Mrs. J. C. Whisker, J. C. Whisker, A. M. Wilson, Max Hoffman, Arthur M. Enney, Robert Wright, William Findley, Anselm Wolf, Richard Bennett, Louis Haase, H. E. McFall, G. C. Seebart, Aron Johnson, J. R. Holliday, John L. Johnson, Nels Haglund, Ole B. Hoven, William Dewar, William Dewan, Thomas Willis, N. A. Colby, F. M. Howery, Edward H. Fuller, Martin McDonough, Geo. Wagner, Clarence E. Burgess, C. J. Johnson, John Engstrom, Charles Kirkner, John Irving, Chester A. Cary, Thomas Stephens, Gustaf Benson, J. A. Perrin, John Johnson, John O. Helgerson, Juel B. Johnson, John Bryant, R. A. Fults, Ole Opsal, Wm. E. Clark, Carl E. Anderson, Ashmer Fulton, Lelli Opsal, Frank Sumption, Christoph Konrad Reese, H. J. O'Donnell, Michael Brossart, Ben Cisco, Bey G. Mease, B. Wolthius, Edwin Nicholi, Olive Spencer Nicolai, Paul Wolthius, Bernard McDermott, John A. Reils, Augustus C. Barry, Phaon A. Seidell, N. P. Frandsen, Fred Ludwig, Eliza S. Minner, Elmer E. B. Todd, Samuel Stewart, Fred B. Watke, Lester L. Nichols, Lester Nichols, John M. Fixa, Mrs. F. B. Watke, Josephine McDermott, John N. Westberg, S. E. Brown, John G. Arthur, Anna McDermott, Carice J. Phelps, James A. Davison, J. G. Phelps, C. E. Boatman, M. R. McLane, M. R. McLean, William T. Markhus, Amy Wilkinson, Orlando F. Trace, John R. Hayden, Thomas Conroy, Lewis E. Bergman, A. F. McNamara, E. T. Brough, Torwald T. Takerud, Ella C. Higgins,

Ella C. Higgenes, William Siegel, Edward Trainor, A. R. Warner, Gust Anderson, Bruno Kippels, H. N. Clarey, A. J. Warner, Edward Walline, Herman Kasperson, Herman Keslperson, Fred Levitre, John Hagebak, Frank M. Wrabek, Oscar J. Thorssen, John F. Wrabek, Eben C. Rast, Paul E. Miller, John Shepherd, Stella Wilkinson, Martin Conroy, Estine B. Durdall, Harry B. Higgins, J. Johnston, Bernhard H. Anderson, Mrs. Sina Takerud, John C. Engen, Mary M. Miller, Katherine D. Cavanaugh, Harrison L. Hunt, G. W. Robinson, W. H. Robinson, Victor Malen, Richard F. Anderson, Joseph Ricker, Joseph Risher, Lewis Still, George Nicholson, Thomas McClure, James Wood, Perry Gearhart, Perry Geahart, J. W. Pratt, Louisa McDermott, O. W. Davis, Fred Bairstow, V. V. Barnes, Gus D. Thomas, Percy James Clibborn, Robert I. Austin, Robert J. Auston, W. Gordon Hately, Walter C. Hately, John C. Hately, John Tredwell, Otto J. Volkman, Henry Rust Boomer, Woodbury S. Agar, Horace G. Newhall, William C. Powers, Otto A. Sommer, Charles Berrall, A. B. Peterson, Delbert R. Ingwerson, Chris E. Risser, John G. Appenzeller, J. Thomas Merry, Harry E. Eckles, Hyland E. Wilson, William Buby, Wm. Ruby, George S. Law, Gilbert E. McClelland, Charles J. Barnard, John S. McCullagh, John Powell Thomas, Robert Powell Thomas, John O. Helgeson, Ole B. Haven, John A. Nelson, James Hetland, L. O. Ringdahl, Mat Kohler, Michael McManus, John Kuppe, Tarvald T. Takerud, Victor Malm, B. Wolthins, Paul Watkins, Annie Frainer, Celia Frainer,

Laura Dillon, Thomas Pogroszewski, Chas. E. Arnsbary, Minnie Amsbary, Robert Shelby, F. J. Quame, Reinhold F. Weirr, Charles E. Shude, Mrs. J. Hewitt, John F. Marzen, Geo. L. Viscomte, Walter Crane, J. O. Pratt, J. L. Huntley, Horace J. Newhall, Henry E. Eckles, and Retta E. Bishard,

Interveners.

Oregon and California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee and Union Trust Company of New York individually and as trustee, the defendants in the above entitled cause; and

JOHN L. SNYDER, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Frances S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock, defendants, cross-complainants in the above entitled cause, and

SIDNEY BEN SMITH, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neil, Alexander Fauske, Francis Wiest, Cordelia Michael,

John B. Wiest, Cyrus Wiest, John Wiest, Thomas Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin, defendants, cross-complainants in the above entitled cause, and

JOHN H. HAGGETT, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman, defendants, cross-complainants in the above entitled cause; and

WILLIAM F. SLAUGHTER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 24th day of September, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

EDWARD D. TOWNSEND, Louis G. English, Ralph W. Core, and Edgar C. Holladay, interveners in the above entitled cause; and

JOHN BURBEE, Marion Smith, Charles Burbee, Oscar H. Sherman, and Charles Wiest, interveners in the above entitled cause; and

MILO F. DENNIS, and Leopold H. Dietz, interveners in the above entitled cause; and

FRANK TERRACE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

CHARLES J. VANZILE, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in the intervention in this cause on the 23rd day of December, 1908, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

LUTHER E. TROWBRIDGE, intervener in the above entitled cause; and

GEO. W. WRIGHT, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright, and Joseph E. Wright, interveners in the above entitled cause; and

WILLIAM E. CARTER, Frank Carter, and William H. Prentice, interveners in the above entitled cause; and

ARTHUR L. GOLDER, George W. Trefren and Lewis J. Trefern, interveners in the above entitled cause; and

ELMER L. HANCOCK, and each and all of the persons whose names are specifically set forth in the above title to this cause; commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 8th day of February, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ROBERT AISTROP, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude, and Frank A. Durrah, interveners in the above entitled cause; and WILLIAM McLEOD, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sarjent, Fred A. Sarjent, Travis Martin, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley, interveners in the above entitled cause; and

B. W. NUNNALLY, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker, and O. N. Cranor, interveners in the above entitled cause; and

PAUL C. L'AMOREAUX, Albert E. Barkman,

Clyde M. Adair, Carrie M. Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman, and Rose L'Amoreaux, interveners in the above entitled cause; and

JOHN F. FOWLER, Fred B. Hussey, L. L. Scott, Eliza Scott, Geo. W. Scott, L. D. Beary, Glen W. Armour, W. J. Sweet, T. J. McMullen, Geo. S. Lindsey, L. F. Jones, A. Noble, H. N. Noble, H. C. Jones, A. A. Noble, Bertha V. Scott, Gertrude J. McMullen, Emeline S. Phelps, Jas. K. Phelps, Margaret B. Hallowell, C. W. Chapman, Orlando S. Phelps, Robert D. Shutt, Thos. J. Lillis, J. L. Wadsworth, Jessie P. Coffin, Vestel P. Coffin, R. W. Purdum, Lena A. Ingram, H. L. Ingram, Belle Peck, Floy McLeod, Sara Ingram, E. H. McKibbon, J. C. Perry, M. LeRoy White, Minnie M. Halliday, Margaret White, A. LaMare, J. J. Kobetich, John Alderson, Chris Knudsen, S. T. Farr, Chas. Carlyle, Clyde A. Gates, Henry Olmstead, B. Lindahl, Wm. O. Foote, Geo. Schlosser, John R. Read, A. O. Nelson, O. Erickson, T. L. Draper, Frank L. Draper, John Adamson, Leonard Anderson, A. M. Frankfurt, M. S. Langdon, John Olson, John Hedberg, Jas. DeRose, J. Frank LaRoe, Fanny M. LaRoe, Albert O. Skotterud, C. Wallgren, Emma C. Phelps, Arthur L. Dewey, H. H. Keith, C. Tuttle, H. A. Fisher, Lena M. Storla A. Johnson, Cora E. Ferrel, Van R.

Ferrel, Thos. C. Coffin, Geo. Harrison, Fred C. Smith, Walter Hatcher, O. W. Peterson, John Forsberg, Dan'l M. Smith, S. J. Morris, I. J. Edwards, Andrew Lindstrom, A. A. Johnson, I. Carpenter, T. A. McCormick, John C. Farley, John Fitzgerald, Wm. H. French, Geo. L. Scarlett, Michael Fitzgerald, Nils P. Lindgren, Hokan Lundgren, Emma E. Lundgren, Anna E. Lundgren, E. R. Redlich, Ida S. Bell, Milton S. Parrott, John Smedlund, F. E. French, Mary E. Wadsworth, Oscar Sandstrom, Frances A. Short, Albert F. Reed, Lewis E. Handley, William F. Hallowell, Beverly W. Coiner, Anna Arickson, M. H. Woolsey, Sr., E. G. Wollum, Annie Lemon, Martha J. Chapman, Robert Carlson, and Minette Johnson, interveners in the above entitled cause; and

L. C. KEYLON, E. E. Keylon, C. S. Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphs Gaunt, and Anton Carlson, interveners in the above entitled cause; and

R. E. CAMERON, Everett B. Coffin, Ansel B. Hill, Arthur D. Bird, Elizabeth Robinson, W. J. H. Best, Frank J. Clements, Peter H. Ludwig, Hugh Mair, Anna M. Chase, D. H. Smith, Sarah J. Smith, Mary E. Ludwig, W. J. Hodder, W. B. Heffron, E. E. Christman, James E. Phillips, D. J. O'Connor, Thomas R. Williams, Zula D. Bird, William E. Donohue, James S. Chase, P. T. O'Connor, J. W. Braman, Julius J. Gregat, D. D. Whitcomb, L. F. Hatter, Gertrude Mae Schneider, Marcellus L. Whitcomb, Gilbert Thorson,

Fred Schneider, Jas. W. Curtis, Virgil W. Creech, Bertha Josephine Howe, James L. Hoadley, James O'Sullivan, Essie P. Mitchell, J. Y. Mitchell, Albert F. Hopstein, R. H. Holbrook, Edgar H. Blair, R. H. Wilhermsdorfer, Wm. H. Finck, J. T. Hatter, Wm. Curtis, J. A. Schoenberger, Kity V. Hogan, W. H. Hogan, Aaron L. Beers, John C. Kech, Estella A. Beers, Libbie D. Hagler, H. W. McFate, Henry R. Hale, Vincent J. Dermott, John M. Jackson, Andrew M. Thomas, B. Calling, Robert Dudgeon, Mabell F. May, Walter May, Lewis C. Hall, H. A. French, Henry C. Hill, C. C. Cease, Felix A. Rogers, Herman Meyer, Ray McFee, Mary A. Day, Anna E. Loupman, Francis O. Whealon, Bertha May Carr, John Mogus, Chester Kirkpatrick, Chas. Skuhra, F. E. Hammond, D. C. Hall, E. M. Bronilette, M. A. Sprague, J. F. Treen, J. E. Amling, Jennie Rosencrans, Dorotha C. Kech, Preston H. Carr, and John H. Miller, interveners in the above entitled cause; and

CHARLES W. VARNUM, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Leabo, Mary E. Black, Arthur J. Plate, Flora E. King, Howard S. Robertson, W. E. Bowden, Frank B. Manzer, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson,

Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncy Thomas, and Adeline James, interveners in the above entitled cause; and

NICHOLAS HERRMAN, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketchum, G. A. Hutzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan, Hortence B. Lennan, P. G. Larson, William Hoeck, and Henry Hoeck, interveners in the above entitled cause; and

EDWIN F. ANDERSON, Emma K. Barr, Mabel A. Barr, John Boeck, Wardel Boeck, G. V. Booth, Anna B. Booth, Joseph W. Brady, William A. Boze, Eric Q. Brainard, John Charles Brodie, George Brunt, J. R. Buck, George A. Buck, Thomas Butler, F. M. Bybee, Herbert W. Calkins, Ben W. Calkins, N. W. Calkins, Nellie B. Calkins, Etta S. Clear, M. H. Coffin, Edna Coffin, Mark Coffin, Mary A. Coffin, Elza Davis, George J. Davis, Thea Falk, John C. Filer, Mary G. Filer, Frank C. Irons, Jacob H. Keefer, R. D. Leach, Lillian E. Leach, Andrew C. Leach, Amelia Lind, M. E. Longfellow, W. L. McCaslin, Ira L. Macomber, Harry J. Marcus, Elias D. Marquand, D. G. Martin,

Helen Martin, Frank J. Miller, George Miller, George W. Mills, Fred Mosely, Althea Munroe, Orr W. Noble, William S. Northrup, David R. Page, C. M. Paxton, Helen A. Payne, Alice J. Pelot, Henry Rasmussen, Elmer Rasmussen, Irene K. Rodgers, Napoleon B. Rodgers, William D. Rogers, Frank O. Schramm, A. J. Seckner, Gertrude Seckner, George E. Smith, Dallas W. Spangler, D. W. Stainbrook, Anna Steensland, Frank R. Storm, Norbert H. Storm, L. B. Taylor, Joseph Thompson, C. H. West, J. Ernest White, Daniel A. Wisecup, W. W. Calkins, Etta S. Clarr, Marg G. Filer, Guy E. Winzer, and Montello Gray, interveners in the above entitled cause; and

FRED J. GOULD, Beverly B. Deems, George Daniel, W. H. Harris, John D. Sullivan, Daniel S. Green, Adolph O. Keller, Peter Haupt, Lillian M. Hanley, Tobias S. Miller, Ezra H. Stafford, Peter T. Barrett, William A. McAtee, Joseph V. Barrett, George B. Reynolds, Massey Wilson, Henry Schurmann, Edwin B. Schurman, Adolph G. Enderly, Flora A. Branstetter, William D. Burhans, Jacob J. Koenigsmark, Florence E. Stafford, Fannie A. Stafford, Edwin M. Stafford, Justus H. Hohl, Louis J. Bechtold, John C. Greulich, A. M. Scheel, Effie Grace Sumney, Herman C. Kralemann, J. W. Vandolah, Ward D. Flinn, Joseph A. Stewart, C. W. Cooper, Hoxie Cooper, Roxie Cooper, Flora Beardsley, Raymond M. Beardley, James A. Owens, Clinton S. Braden, S. M. Braden, Sears Lehman, Garfield J. Tansing, L. G. Davis, Robert J. Hood,

Robert Rives, J. B. Leemon, Helen H. Dearborn, W. B. Dearborn, W. E. Dearborn, David O'Neal, Leonard P. Lockwood, George K. Boyd, Frank J. Smith, Estella J. Smith, John D. LaCroix, Benjamin F. Wheeler, F. A. Gooch, Mrs. M. O. Woodruff, Charles P. Howland, James Lacy, A. L. Gibbs, Paul Vinyard, William H. Lockwood, Allen W. Thomas, and E. G. Bentley, interveners in the above entitled cause; and

ABRAM B. HORNER, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abraham B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 15th day of December, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

GEORGE B. BOTHWELL, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 6th day of October, 1909, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

HERVEY L. KEYES, Chester H. Thornson, Chester H. Thomson, Lynn S. Carter, Byron D. West,

George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arendonk, Ira Lubbers, Reinier Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Heunink, Bertha Moe Seaver, and Elmer H. Ruslink, interveners in the above entitled cause; and

MARVIN P. ALFORD, and each and all of the persons whose names are specifically set forth in the above title to this couse, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause, on the 14th day of February, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause; and

ALBERT BOZARTH, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court,

filed their joint complaint in intervention in this cause, on the 15th day of March, 1910, and who are too numerous to specifically name again herein, interveners in the above entitled cause.

And they and each and all of the aforesaid defendants, defendants cross complainants, and interveners in the above entitled cause, conceiving themselves aggrieved by the judgment and decree made and rendered in the above entitled court in the above entitled cause, and entered herein on the first day of July, A. D. 1913, at the March, 1913, term of said court, in favor of the complainant in the above entitled cause and against each and all of the said defendants therein, and against each and all of the said defendants cross complainants therein, and against each and all of the said interveners therein, wherein and whereby, among other things, it was and is adjudged and decreed that all of those certain lands and estates in lands described in the said judgment and decree, have become and now are forfeited to, and the title to all of said lands and estates in lands has reverted to, and now is revested in, the United States of America, and all of said lands and estates in lands now are the absolute property of the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same or any part thereof, by or in favor of the defendants, cross complainants and interveners herein or either or any of them, or any party or parties claiming under them or either or any of them; and

WHEREIN AND WHEREBY, among other ings, it was and is further adjudged and decreed that ie title of the United States of America to all of said nds and estates in lands be, and the same hereby is uieted and confirmed, and particularly as to any and l claim or claims of right, title, interest or lien, to or pon the same or any part thereof, by or in favor of ie defendants, cross complainants and interveners erein, and each and every of them, and each and every arty or parties claiming under them or either or any f them; and

WHEREIN AND WHEREBY, among other ings, it was and is further adjudged and decreed that ch and all of the defendants, cross complainants and terveners herein, and their respective officers and gents be, and they and each of them hereby are forever njoined and restrained from in any manner claiming l claim or claims of right, title, interest or lien in, to or pon the aforesaid lands and estates in lands, or any art thereof; and from in any manner selling, convey- g, leasing or disposing of any of said lands or estates lands, or any interest therein; and from negotiating, xecuting or recording any document or instrument, nd from doing any other act or thing, which shall any manner affect or encumber the title to said lands estates in lands, or any part thereof; and from going pon said lands or any part thereof; and from cutting, emoving or in any manner using or injuring any of ie timber or other natural products thereof; and from

in any manner committing trespass upon said lands or any part thereof; and from in any manner using or interfering with said lands and estates in lands or any part thereof, or the title or possession thereof; and from contracting with, inviting, inducing, or in any manner whatsoever permitting others to do any of the things aforesaid; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the said judgment and decree shall not apply and is not intended to apply to reesrvations or exceptions of right-of-way for the main track of the railroad of the Oregon & California Railroad Company as actually constructed, established and in operation at the date of the said decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the defendants Oregon and California Railroad Company, Stephen T. Gage and Union Trust Company shall within sixty days from the date that any of said lands shall revert to said defendants, or either of them as in said decree mentioned, execute and file with the clerk the above entitled court a deed of conveyance, in due and legal form, conveying and confirming the said lands unto the United States of America, free from any and all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them. And in the event that said defendants, or either or any of

them, shall fail to execute and file any such deed or deeds of conveyance as aforesaid, the said judgment and decree shall operate, and shall have the same force and effect, as such deed or deeds of conveyance; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that there be excepted from the operation of said judgment and decree all right-of-way and station grounds as established and in actual use at the date of said judgment and decree in the operation of the railroad of the defendant Oregon and California Railroad Company; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that within sixty days from the date of said judgment and decree the defendants, Oregon and California Railroad Company, Stephen T. Gage, and Union Trust Company shall execute and deliver to the Clerk of the above entitled court a deed of conveyance in due and legal form, conveying and confirming unto the United States of America all of the said lands situated in the State of Washington, free and clear from any and all claim, or claims of right, title, interest or lien, in, to or upon the same, or any part thereof, in favor of the defendants herein or either or any of them, which said lands are particularly described in said judgment and decree; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that each and all of the cross complaints and bills and peti-

tions in intervention be and they are dismissed for want of equity with costs in favor of the prevailing parties, respectively, to be thereafter taxed; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainants' prayer for an accounting be and the same is denied; and

WHEREIN AND WHEREBY, among other things it was and is further adjudged and decreed that the complainant, the United States of America have and recover from the defendants, Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage and Union Trust Company its lawful costs and disbursements herein, and that execution issue therefor,

Do and each of them does hereby jointly and severally appeal from the said judgment and decree and from the whole and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

And the said Oregon & California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as trustee, and Union Trust Company of New York, individually and as trustee, the said defendants and each and all of them in the above entitled cause, and the said defendants cross complainants and each and all of them in the above entitled cause and the said interveners and each and all of them in the above

ntitled cause, file herewith their and each of their assign-ent of errors, asserted and intended to be urged upon is, their said appeal.

And the said Oregon & California Railroad Com-any, Southern Pacific Company, Stephen T. Gage, dividually and as trustee, and Union Trust Company, f New York individually and as trustee, the said de-endants, and each and all of them, in the above entitled use, and the said defendants cross complainants, and ch and all of them, in the above entitled cause, and e said interveners, and each and all of them, in the ove entitled cause, pray that this, their petition for id appeal, and their said appeal may be allowed, and at citation issue herein as provided by law, and that transcript of the record, proceedings and papers upon hich said judgment and decree was made and entered, ly authenticated, may be sent to the United States ircuit Court of Appeals for the Ninth Circuit; and so that an order be made fixing the amount of security hich the said defendants, the said defendants cross com-lainants and the said interveners shall give and furnish pon this their said appeal, in order to supersede, sus-end and stay the said judgment and decree and every art thereof, and that upon the giving of such security e said judgment and decree, and every part thereof, nd execution thereon, be superseded, suspended and ayed until the final determination of this cause on peal.

And your petitioner will ever pray.

PETER F. DUNNE,
WM. D. FENTON
and JAMES E. FENTON,

WM. F. HERRIN,
of Counsel.

Socilitors and Attorneys for said defendants Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as trustee.

MILLER, KING, LANE
and TRAFFORD, DOLPH,
MALLORY, SIMON &
GEARIN,

JOHN C. SPOONER,
JOHN M. GEARIN,
of Counsel.

Solicitors and Attorneys for said defendant, Union Trust Company of New York, individually and as trustee.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,
Successors to
SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William McLeod, Charles O. Anderson, John B. McLeod, John L. Morgan, A. N. Sarjent, J. W. Sargent, Travis Martin, Fred A. Sarjent, J. W. McDonald, E. J. Pearl, Robert C. Martin, Susan Martin, Gertie Martin, Susie Martin, B. S. Martin, S. L. Overton, L. Overton, H. A. Foley, D. O. Cross, and R. C. Foley.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COUNER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Which petition for appeal, with order therein, was duly entered by the said court on August 29, 1913, in the following words, to-wit:

The within petition for allowance of appeal is granted, and the said appeal is allowed as prayed, upon the giving of a bond in the sum of One Hundred Thousand Dollars ($100,000), to be approved by this court, which bond shall operate as a supersedeas from the date of its approval, except as to the injunctive portion of said decree.

Dated this 29th day of August, 1912.

CHAS. E. WOLVERTON,
Judge.

District of Oregon,)
) ss.
County of Multnomah.)

Due service of the within Petition for Appeal is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof duly certified to.

JAS. C. McREYNOLDS, Atty. Genl.
B. D. TOWNSEND, Spl. Asst. to Atty. Genl.
By GLENN E. HUSTED,
Spl. Asst. to Atty. Genl.,
Attorney for Complainant.
CLARENCE L. REAMES,
United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court, by V. Johnston, Deputy.

And on August 29, 1913, there was duly filed in
id court Assignment of Errors of the defendant Union
rust Company, individually and as trustee, in words
d figures as follows, to-wit:

(TITLE)

EFENDANT UNION TRUST COMPANY'S (INDIVIDUALLY AND AS TRUSTEE) ASSINGMENT OF ERRORS.

The defendant, Union Trust Company, of New
ork, individually and as trustee, complains of errors
the proceedings in this case, in the District Court of
e United States, for the District of Oregon in the
ove entitled cause, and in the decision and decree
dered, made and entered therein, and assigns the fol-
ving as the errors complained of:

1.—The Court erred in holding that the United
ates, complainant herein, was entitled to the relief
ayed for in its complaint herein, or to any relief, and
not holding that the said complaint of said com-
inant should be dismissed.

2.—The Court erred in holding that the complainant
l any right, title or interest in or to the lands de-
ibed in the decree herein, or any part thereof.

3.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

4.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

5.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

6.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

7.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, individ-

ually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or any party or parties claiming under them, or either or any of them.

8.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

9.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

10.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

11.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

12.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or the officers or agents of them, or any or either of them, be, or what they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or form in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

13.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Stephen T. Gage, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

14.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America,

all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise, or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

15.—The Court erred in holding that the above mentioned defendant, Union Trust Company, has no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

16.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

17.—The Court erred in holding that this defendant,

as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

18.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, this defendant, Union Trust Company of New York, was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in said mortgage of July 1, 1887, and in holding that this defendant was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

19.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to this defendant, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against this defendant.

20.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

21.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

22.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

23.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

fornia Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

24.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

25.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

26.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grants to raise funds or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

27.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

28.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

29.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

30.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

31.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

32.—The Court erred in holding that any sale or

sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

33.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

34.—The Court erred in holding that the grantee of said West Side Grant, or its succesosrs in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy intent and legislation of Congress, in the premises.

35.—The Court erred in not holding that the proviso in the Aact of Congress of April 10, 1869, to-wit,

at the lands granted by the act aforesaid shall be sold
ctual settlers only, in quantities not greater than one
ter section to one purchaser and for a price not ex-
ing two dollars and fifty cents ($2.50) per acre,"
id for uncertainty.

6.—The Court erred in not holding that the said
iso is a purely directive, regulative covenant.

7.—The Court erred in not holding that the said
iso is unenforceable by the United States, because
terest is purely nominal.

8.—The Court erred in not holding that the said
ted lands, East Side and West Side, both or either,
imbered in character and were and are not capable
ctual settlement.

9.—The Court erred in holding that the provision
id act of July 25, 1866, as to the filing of assent had
been done away with by the act of Congress of June
1868, mentioned in the bill of complaint and en-
l, "An act to amend an act, entitled, 'An act grant-
lands to aid in the construction of a railroad and
graph line from the Central Pacific Railroad in Cali-
ia to Portland, in Oregon.'"

0.—The Court erred in holding that the provision
id act of July 25, 1866, as to the filing of assent
not been waived by said act of June 25, 1868.

1.—The Court erred in holding that said provision

as to the filing of assent had not been repealed by said act of June 25, 1868.

42.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

43.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

44.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

45.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise,

because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

46.—The Court erred in holding that said provision as to the filing of assent in respect to said East Side Grant, was a condition, either precedent or subsequent.

47.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

48.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

49.—The Court erred in holding that any impostion by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing

under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

50.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

51.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

52.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first

tion of twenty miles of said railroad and telegraph
e within two years after the passage thereof, and
t thereupon said act became operative and vested in
d California and Oregon Railroad Company an in-
est in the entire grant.

53.—The Court erred in not holding that when the
lifornia and Oregon Railroad Company filed its as-
t to said Act of Congress of July 25, 1866, in the
partment of the Interior within one year, and com-
ted the first section of twenty miles of said railroad
l telegraph line, within two years after the passage
the said act, Congress was without lawful authority
annex a new condition, by amendment or otherwise,
the land-grants.

54.—The Court erred in not holding that had the
islature of Oregon failed to designate a company to
struct said railroad and telegraph line in Oregon,
California and Oregon Railroad Company, upon
npliance with the provisions of said act of July 25,
6, had the right and it was authorized by said act to
struct the entire railroad and telegraph line from
Central Pacific in California to Portland in Ore-
and thereby earn, and become entitled to, the entire
d grant under said act.

55.—The Court erred in not holding that the said
of Congress of July 25, 1866, authorized the Cali-
nia and Oregon Railroad Company to construct any
t or all of the said railroad and telegraph line pro-

vided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

56.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

57.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

58.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

59.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869,

being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

60.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

61.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

62.—The Court erred in not holding that after performance by the said California and Oregon Railroad

Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add, to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

63.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

64.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

65.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

66.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a conditionn precedent.

67.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

68.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

69.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

70.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grant, in any re-entry for breach of condition, or legislature equivalent thereof, or in any legislative declaration of forfeiture.

71.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

72.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

73.—The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

74.—The Court erred in holding that thecomplainant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company, and said Stephen T. Gage, individually or as trustee, or any or either of them, or any party to the cause.

75.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

76.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

77.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

78.—The Court erred in holding that at the time

of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

79.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad Company and said Southern Pacific Company and against said Stephen T. Gage, individually and as trustee.

80.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side grant or of said West Side grant.

81.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in receipt to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

82.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to the said Wast Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

83.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture, had not been acquicssced in by Congress and complainant.

84.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

85.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

86.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

87.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

88.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

89.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, of said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

90.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

91.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

92.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

93.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

94.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

95.—The Court erred in not holding that the proviso

for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

96.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866, and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

97.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 8, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

98.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

99.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation ex-t as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time hin which any of the lands shall be sold to actual set-rs; and

(e) The said conditions does not define who is an ual settler; and

(f) The sale of said lands is wholly dependent on there being actual settlers thereon, an uncertain nt, and the restraint contained in said provision ounts to a perpetuity; and

(g) Because said conditions do not contain any use of re-entry or forfeiture for a violation thereof.

100.—The Court erred in not holding that the com-inant by its conduct in relation to the lands granted said acts of Congress has waived, and is estopped m claiming, a forfeiture thereof.

101.—The Court erred in not holding that the grant-under said acts of Congress or their successors, as-iates or assigns, had the right to mortgage the whole, any part, of said land grant to obtain money where-h to construct the said railroad and telegraph line.

102.—The Court erred in not holding that under the

terms and provisions of said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

103.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

104.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

105.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

106.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

107.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

108.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

109.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

110.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

111.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

112.—The Court erred in holding that issuance of patents to said lands by the land department was not

aiver on the part of the complainant of the right to st upon the performance by the Railroad Company he provisions in said grants as to the sale of lands ctual settlers.

113.—The Court ered in holding that the act of Con- s of April 10, 1869, was a renewal or revival of the nt under the act of Congress of July 25, 1866, or the said act of April 10, 1869, was other than a ver of the right of forfeiture on account of any of conditions in said grant.

114.—The Court erred in holding that at the time of passage of the said act of Congress of April 10, 9, the said land grant under the act of Congress of y 25, 1866, had lapsed.

115.—The Court erred in not holding that this suit not be maintained as one to enforce forfeiture nor uiet title, because—

(a) Neither the United States nor Congress has ared a forfeiture; and

(b) The fact of forfeiture has not been adjudi- d by a court of law; and

(c) The defendant, Railroad Company, holds the l title to and the possession of said granted lands.

116. The Court erred in not holding that the said ndant, Oregon and California Railroad Company, entitled to a trail by jury of the issue as to whether ot any of the conditions of said grants, or either of

them, had been breached.

117. The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof and complainant is estopped to claim a forfeiture of said land grant, or any part thereof.

118.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant, Oregon and California Railroad Company, to the Auditor of Railroad Accounts created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary

of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

119.—The Court erred in not holding that the complainant was estopped by the act of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

120.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any

conditions repugnant to the original grant.

121.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

122.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

123.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

124.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre.

125.—The Court erred in not holding that the evidence in said cause was insufficient to support the de-

cree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

126.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

127.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868, or April 10, 1869, or May 4, 1870.

128.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

129.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891, and March 2, 1896.

130.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

131.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

132.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

133.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a

revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

134.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforcable that it was repugnant to the grant and is void.

135.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

136.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers;" and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

187.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, and that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complainants of the defendants' cross-complainants and the complainants in intervention of the interveners-defendants, and (2) adjudges that the complaints' prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually constructed, es-

tablished, and in operation at the date of said decree, be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Stephen T. Gage, individually and as trustee, as may be proper.

MILLER, KING, LANE and TRAFFORD,

DOLPH, MALLORY, SIMON & GEARIN.

JOHN C. SPOONER,

JOHN M. GEARIN,

of Counsel.

Solicitors and Attorneys for said defendant, Union Trust Company of New York, individually and as trustee.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1918.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. WRIGHT,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

State of Oregon,)
) ss.
County of Multnomah.)

Due and legal service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913 by receiving a true copy thereof, duly certified to as such.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of the defendant, Stephen T. Gage, individually and as trustee, in words and figures as follows, to-wit:

(TITLE.)

DEFENDANT STEPHEN T. GAGE'S (INDIVIDUALLY AND AS TRUSTEE) ASSIGNMENT OF ERRORS.

The defendant, Stephen T. Gage, individually and as trustee, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint herein:

As against the said defendants and each of them, the said bill of complaint is without equity and cannot be

maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without equity, and cannot be maintained, as to the "West Side Grant," so-called, in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them, the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overuling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complaint to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called, in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred

to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 8 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands de-

scribed in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part

thereof by or in favor of this defendant, individually or as trustee, or the defendant Oregon and California Railroad Company, or the defendant Southern Pacific Company, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same or any part thereof, by or in favor of this defendant, individually or as trustee, or the said Oregon and California Railroad Company, or the said Southern Pacific Company, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that the complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from conmitting in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV

of said decree set forth, to this defendant, individually or as trustee, or to said Oregon and California Railroad Company, or to said Southern Pacific Company, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Oregon and California Railroad Company, or the said Union Trust Company, or any or either of them shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Oregon and California Railroad Company, or said Union Trust Company, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of

America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date of July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that this defendant, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of this defendant, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the own-

ers and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount

and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, individually or as trustee, or said Oregon and Cali-

fornia Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose, or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company,

individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant,

under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that the proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the act aforesaid shall be

sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty ($2.50) cents per acre," is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said

act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, individually or as trustee, or said Oregon and California Railroad Company, or said Southern Pacific Company, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise because of the action of said East Side Com-

pany in filing written assent on June 30, 1869, or
any other time, or in taking any step or steps to bri
the attention of Congress to the matter of such asse
or to procure any action by Congress in that behalf,
any such step or steps were taken, or in applying to Co
gress, if such application there was, for leave to f
such assent, or otherwise, or at all.

59.—The Court erred in holding that said provisi
as to the filing of assent, in respect to said East Si
Grant, was a condition, either precedent or subsequer

60.—The Court erred in holding that the proviso
respect to settlers in said act of April 10, 1869, was
question in the case requiring judicial determination.

61.—The Court erred in holding that any impo
tion by Congress under said proviso of any qualificatio
restriction, limitation, or burden upon the estate grant
under said act of July 25, 1866, was within the pow
of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any impositi
by Congress under said proviso, of any qualification, r
striction, limitation or burden upon the estate grant
under said act of July 25, 1866, was within the power
Congress to enact, or other than a nullity, regard b
ing had to the rights of the California and Oregon Ra
road Company, a California corporation, under said a
of July 25, 1866, and to the vested interests, accruir
under said act to said last named corporation in virt
of its acceptance of said act, and its conduct, constru

tion and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said act of Congress was entire and not severable, and upon the filing of assent to said act in the Department of the Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Initerior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that

thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land-grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed

to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of

Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Initerior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10,

1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77. The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Con-

gress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side Grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complain-

ant was entitled to a decree quieting its title to either of said grants against this defendant, individually or as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grnatees, if such there were, did not have the possession of the same.

90.—The court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants, or either of them, or any part thereof, that the same had not been reduced to possession and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever

since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, individually and as trustee, and said Oregon and California Railroad, and said Southern Pacific Company, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption

of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture,had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—TheCourt erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885 andSeptember 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October 1902, was and is barred by the Acts of Congress of March 3, 1891 and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the statute of limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866 and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers,

contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provision in the said acts of April 10, 1869, and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 8, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111. The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settlers; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provision amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provision of the said act of Congress of

April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under sail land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during

the construction of said railroad it was impossible for the grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869 and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not

a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869 was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether

or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the transactions of the land department of said defendant Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like an-

nual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant, and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by

the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in the construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents ($2.50) per acre.

188.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

189.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition sub-

sequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and that the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869 for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers"; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land de-

partment of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, individually and as trustee, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of the railroad of the defendant Oregon and California Railroad Company, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of the defendant Oregon and California Railroad Company in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said defendant Oregon and California Railroad Company, as actually con-

structed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company and Southern Pacific Company, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, individually and as trustee, said Oregon and California Railroad Company, said Southern Pacific Company and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNNE,

WM. D. FENTON,

and JAMES E. FENTON,

Solicitors and Attorneys for said defendant, Stephen T. Gage, individually and as trustee.

WM. F. HERRIN, of Counsel.

Service of the foregoing assignment of errors admitted this 29th day of August, 1918.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &
BURKHEIMER,
Successors to
SHEPARD & FLETT;
JOHN E. BURKHEIMER,
CHARLES E. SHEPARD,
C. I. LEAVENGOOD,
JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B
Mauzer, F. H. Southerland, M. B. Carpen-
ter, H. E. Gould, J. N. Husted, Magdalene
Haycox, Samuel Haycox, Louise Rommel,
R. W. Edwards, Robert James, Clare M.
James, Albert Trego, Leta G. Trego, Harry
Hurlbut, Hally E. Hurlbut, Charles E.
Pate, Benjamin Bowles, Jesse Bowles,
Peter J. Oleson, Frances R. Hopper, Miller
E. Preston, Willis G. Mudd, A. C. Spencer,
Martin Herbert Kennedy, Dell Dickson,
Chauncey Thomas, Frank B. Manzer and
Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said
interveners Nicholas Herrman, Robert
Kruse, George W. Sepham, F. E. Gige,
Emma Case, Celia Zaugg, George F.
Brooks, Harriett Poll, Mary S. Blair, Jay
Tice, Frank E. Poll, R. E. Andrews, John
Subert, F. K. Kamp, James McHugh, C.
B. Hurby, J. E. Ketcham, G. A. Hunt-
zicher, August Matz, Maud Stewart, Fred
C. Lundy, Charles F. Barnes, F. A. Hilde-
brand, Henry A. Balles, J. P. Tiffault,
Fred Bustrin, H. M. Bustrin, Byron G.
Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, Chester H. Thomson, Chas. B. Winchester, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said Court the Assignment of Errors of defendant Southern Pacific Company, in words and figures as follows, to-wit:

(TITLE)

DEFENDANT SOUTHERN PACIFIC COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Southern Pacific Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court ered in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity and cannot be maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity, and cannot be maintained as to the "West Side Grant", so-called in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "East Side Grant", so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, trans-

actions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7.—The Court erred in overuling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sus-

taining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 8 of subdivision First of the prayer of the bill of complaint herein.

11.—The Courts erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complainant herein.

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

18.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling the complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of

said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that the said bill should be dismissed.

19.—The Court erred in holding that the lands, or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part, have become or now are forfeited to, or that the title to the same, or any part thereof, has reverted to and now is revested in the United States of America, or that the same, or any part thereof, now are the absolute property of the United States of America, or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or defendant Oregon and California Railroad Company, or defendant Stephen T. Gage, individually or as trustee, or de-

fendant, Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted, or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, by or in favor of this defendant, or the said Oregon and California Railroad Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually, or as trustee, or

said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Oregon and California Railroad Company, or to said Stephen T. Gage, individually or as trustee, or to said

Union Trust Company, individually or as trustee, that the defendant Oregon and California Railroad Company or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall, within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, the defendant Oregon and California Railroad Company, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest, or lien in, to or upon the same, or any part thereof, in

favor of said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant, evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company had no lien on said lands, or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent, or not, said Union Trust Company of New York was not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decreed.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act

granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof is expressed by the proviso as to sale to actual settlers contained in the act of Congress of April 10, 1869, referred to in said bill and entitled "An Act to amend an act entitled, 'an act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon.'"

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An Act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad, as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any

provision of said act of July 25, 1866, or of said act of April 10, 1869, or of said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side grant to the construction of the

railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to, and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of Said East Side land grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any

part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated by way of distinction, the West Side grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same, for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or re-

funding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser

and for a price not exceeding two dollars and fifty cents (2.50) per acre," is void, for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were not and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon,'"

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and

extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Oregon and California Railroad Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in apply-

ing to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of

Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire gant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California

and Oregon Railroad Company, a grant in presenti, of the odd sections of lands within the limits therein spec filed, along the line of said railroad from the Centr Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the tim of the passage of the act of Congress of April 10, 186 pleaded in the bill of complaint herein, the Californ and Oregon Railroad Company had fully complied wit all of the terms of said act of July 25, 1866, as amende by the act of June 25, 1868, which were required to b performed up to the time of the passage of said act o April 10, 1869.

71.—The Court erred in not holding that prior t the passage of said act of April 10, 1869, pleaded in th bill of complaint herein, the California and Oregon Rai road Company had acquired a vested interest in th whole of the lands granted by said act of July 25, 186 and the said act of April 10, 1869, annexing a conditio to the entire grant was void.

72.—The Court erred in not holding that the sa grant under the said act of Congress of July 25, 186 being single and entire, and said act of April 10, 186 being void as to the California and Oregon Railroa Company, as to the whole of said grant, it is void as t the portion of said grant situated in the State of Or gon.

73.—The Court erred in not holding that the sa act of Congress of April 10, 1869, was void in that it r

quires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the pasasge of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be perfermod prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarrass, delay or defeat the construction of either or any portion of said railroad and

telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79. The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side grant, or any part thereof.

83.—The Court erred in holding that there was any

cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, to legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dismissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Oregon and California Railroad Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any

part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89. The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the said Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91. The Court erred in holding that at the time of of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, said Oregon and California Railroad Company had

legal title and possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant, and said Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands, or any part thereof, either of said East Side or of said West Side grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the asumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side grant, that any breach of such assumed

condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquiesced in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a

condition subsequent, that Congress and the complainant have waived the breach thereof by acquiescence in the many deeds of conveyance made by said Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on an assumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the asumption that the said proviso in the said act of April 10, 1869, and said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and

March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statute of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July

25, 1866 and May 4, 1870, in the actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainant waived any breach of said provisions of right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 8, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeiture act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continuous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and

was a single grant and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and of forfeiture on account thereof as to a portion of the same with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of said Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers, was and is unilateral and

void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon, and the whole thereof, vested in the said Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the said Oregon and California Railroad Company to sell to actual settlers, only, land in quantities

not greater than one quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual settlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July

25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title because—

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Oregon and California Railroad Company, holds legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each case of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, and with the knowledge thereof, and complainant is estopped to claim a forfeiture of the said land grant, or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1903, reports were regularly and semi-annually made of the

transactions of the land department of said defendant Oregon and California Railroad Company, to the Auditor of Railroad Accounts, created by the act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such reports; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1903, the said defendant, Oregon and California Railroad Company, sold some of said granted lands at a price in excess of two dollars and fifty cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer

said grant and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers, only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the act of Congress of July 25, 1866, as amended by the act of April 10, 1869, was estopped from denying the right or power of Congress to pass an act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purposes.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty (160) acres to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Con-

gress.

140.—The Court erred in rendering the judgment and decree herein against the said defendants, Southern Pacific Company, Oregon and California Railroad Company, Stephen T. Gage, individually or as trustee and Union Trust Company, individually or as trustee, or any or either of them, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant, Oregon and California Railroad Company, violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October, 1902, was not concluded against complainant herein and that the alleged cause of action had not been

barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler" clause in each of said acts of Congress to be a condition subsequent and certain and definite, so as to be enforceable, that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual settlers did not apply to purchase the granted lands and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers;" and that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, in that regard, are and each of them is void and that it was beyond the power of Congress to impose upon the railroad company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Southern Pacific

Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants-cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree all right of way and station grounds, as established and in actual use at the date of said decree in the operation of said Oregon and California Railroad Company's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of said Oregon and California Railroad Company, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendants, Oregon and California Railroad Company, and Stephen T. Gage, individually and as trustee, filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Oregon and California Railroad Company and said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

P. F. DUNNE,
WM. D. FENTON and
JAMES E. FENTON.

Wm. F. Herrin,
Of Counsel.

Solicitors and attorneys for said defendant, Southern Pacific Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1902.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

District of Oregon)
) ss.
County of Multnomah)

Due service of the within Asst. of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August, 1913, by receiving a copy thereof, duly certified to.

JAS. C. McREYNOLDS, Attorney General,
B. D. TOWNSEND, Spcl. Asst. to Atty. Genl.
By GLENN E. HUSTED, Spl. Asst. to Atty. Genl.
Attorneys for Complainant.

CLARENCE L. REAMES,
United States Attorney,
By Robert R. Rankin,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. Cannon, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignment of Errors of John L. Snyder, et al., Sidney Ben Smith, et al, Milo F. Dennis, et al, Wm. E. Carter, et al, Wm. McLeod, et al, Arthur L. Golder, et al defendants-cross-complainants, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF OREGON.

THE UNITED STATES OF AMERICA, Complainant.)

vs.

THE OREGON & CALIFORNIA RAILROAD CO., THE SOUTHERN PACIFIC RAILROAD COMPANY, STEPHEN T. GAGE, Individually, and as trustee, and the UNION TRUST COMPANY, individually and as trustee, John L. SNYDER, et al., defendants, cross-complainants, and FRANK TERRACE, et al., interveners, defendants, Defendants.)

NO. 3340 IN EQUITY.

ASSIGNMENTS OF ERRORS.

JOHN L. SNYDER et al, and SIDNEY BEN SMITH, et al., defendants-cross-complainants, and JOHN BURBEE, et al.; MILO F. DENNIS, et al; WILLIAM E. CARTER, et al.; WILLIAM Mc-

LEOD, et al, and ARTHUR L. GOLDER, et al, intervenors, defendants, complain of errors in the proceedings in this case in the District Court of the United States, for the District of Oregon, and in the decision and decree rendered, made, and entered therein, and assign the following as the errors complained of:

1. The court erred in holding that the lands, or any thereof, described in the bill of complaint, and decree, were, or had been, forfeited to the complainant, and that a decree be entered forfeiting such lands or any thereof to the complainant.

2. The court erred in holding that the title of complainant to the said lands or any thereof should be quieted.

3. The court erred in holding that complainant was entitled to recover its costs and disbursements herein, of and from these defendants, cross-complainants, and intervenors, defendants, or any of them.

4. The court erred in sustaining the demurrers of the defendants the Oregon & California Railroad Co., the Southern Pacific Co., Stephen T. Gage, individually, and as trustee, and the Union Trust Company, individually and as trustee, to the cross complainants and bills of intervention, of all or any of these defendants, cross-complainants, and interveners defendants.

5. The court erred in sustaining the motion of complainant to dismiss all or any of the cross-complaints,

and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants.

6. The court erred in holding that all of any of the cross-complaints, petitions, and bills in intervention, of these defendants cross-complainants, and intervenors, defendants, were without equity, and did not state a cause of suit against the above named defendants, and the complainant herein.

7. The court erred in dismissing all or any of the cross-complaints, petitions, and bills of intervention of these defendants cross-complainants, and intervenors defendants.

8. The court erred in not holding that each and all of the cross-complaints, petitions, and bills in intervention, of these defendants cross complainants, and intervenors defendants, stated and showed good and sufficient causes of suit against the above named defendant, and the above named complainant, and entitled each and all of said defendants cross-complainants, and intervenors defendants, to the relief therein prayed for.

9. The court erred in not holding that each of the above named defendants, and the above named complainant should be required to answer all and singular, the cross-complaints, petitions, and bills in intervention of these defendants cross-complainants, and intervenors defendants.

10. The court erred in holding that the complain-

ant is the owner in fee simple, or is in possession of the lands described in the bill of complaint herein, or any thereof.

11. The court erred in not holding that the defendant the Oregon & California Railroad Company, is the owner in trust of the lands described in the bill of complaint herein, and particularly of those portions thereof described in the cross complaints and petitions and bills of intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of the actual settlers, and for the use and benefit of these defendants cross-complainants, and intervenors defendants.

12. The court erred in not holding that under and by virtue of the terms and conditions of the act of Congress 1869 entitled "An act to amend an act Entitled 'An act granting lands to aid in the construction of a Railroad and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon'," and under and by virtue of the terms and conditions of the act of May 4th 1870 entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland, to Astoria and McMinnville in the State of Oregon," the defendant Oregon & California Railroad Company, and all persons taking and holding any of said lands or any interest therein, by through or under it, save and except the actual settlers purchasing the same in quantities not exceeding 160 acres to any one settler and at prices not exceeding $2.50 per

acre took and held all of the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross-complainants, and intervenors defendants, in trust for the use and benefit of such persons as might become actual settlers on any quantity thereof up to 160 acres, and in not holding that the terms and conditions of said trust were such, that when, and in the event any person settled upon any quantity of said lands not exceeding 160 acres, and tendered and offered to the defendant the Oregon and California Railroad Company or its representatives the sum of $2.50 an acre therefor, it became, and was, the legal duty and obligation of said defendant to accept such sum so tendered in full payment for said lands, and to execute a deed conveying the said land so settled upon and paid for in fee simple to such settler.

13. The court erred in holding that the primary and ultimate purpose of congress in granting the lands hereinbefore mentioned was to secure the settlement thereof by citizens of the United States in quantities as great as 160 acres to each settler, and no greater, and to secure to the citizens of the United States so settling thereon, the right and privilege to purchase the lands so settled upon at a price as low as $2.50 per acre, and in not holding that any person becoming a settler upon such lands in the quantities aforesaid, and tendering the aforesaid price thereof to the said defendant the Oregon & California Railroad Company became and was the owner of an equitable interest and estate in the said lands,

and became and was entitled to a decree of said court directing and requiring that said lands so settled upon be conveyed to him upon the payment aforesaid.

14. The court erred in not holding that to now decree a forfeiture of all, or any, of the lands described in the bill of complaint herein is to defeat the purpose and intent of congress in making the grants aforesaid, and is to withdraw the said lands from settlement, when it was the purpose and intent of congress that the same should be settled.

15. The court erred in holding that the grants aforesaid are in any respect lacking in the elements of a trust, or that the terms used in said grant are in any respect indefinite or uncertain as to the conditions upon which the said lands were therein required to be sold, or as to the quantities in which the same were therein to be sold, or as to the persons to whom the same were therein to be sold.

16. The court erred in not construing the term "actual settlers" in the light of congressional enactments adopted prior to the land grants aforesaid, and in the light of the land policy existing in the United States at the time of the making of such grants, to mean, and to specify any person who had chosen to settle upon a quantity of lands subject to settlement as great but not greater as 160 acres by legal subdivisions, and who resided upon such lands, and made the same his home.

17. The Court erred in not giving to the term

"actual settler" the settled judicial meaning, and construction that the same had in the country at the time of the adoption of said land grants.

18. The court erred in not holding that at the time of the adoption of said land grants the term "actual settler" had a definite and certain legislative and judicial meaning, which meaning was intended to be, and was incorporated into and a part of said land grants, and which meaning was of such a nature that whenever the said term was used in legislative action, the same meant and implied, and should now be construed to mean and imply any person occupying and making a home of as large a tract as such person desired up to 160 acres by legal subdivisions of lands subject to settlement.

19. The court erred in holding that the proviso in the act of April 10, 1869, hereinbefore mentioned was a condition subsequent, or operated otherwise than to create a trust in favor of such persons as should thereafter become actual settlers upon the lands therein granted, and in favor of these defendants cross complainants, an intervenors defendants.

20. The court erred in holding that any provision in the act of May 4th 1870 touching sales to settlers was a condition subsequent, and operated otherwise than to create a trust as hereinbefore described.

21. The court erred in holding that the consequence and penalty of forfeiture was attached by congress to a breach of the conditions of said grant, and in not hold-

ing that the proper relief in the event there should be a breach of said conditions was the enforcement by the means usually employed in such cases by courts of equity of the terms and conditions of the trust aforesaid.

22. The court erred in holding that the consequences and penalty of forfeiture was attached by congress to a breach of said conditions, should such there be, or of any provision in said act of May 4th 1870, touching sales to actual settlers, and in not holding that the appropriate remedy for such breach was the enforcement by the means usually employed by courts of equity in such cases of the terms and conditions of the trust aforesaid.

23. The court erred in holding that these defendants cross complainants, and intervenors defendants, had no right, title, or interest in or to the lands described in the bill of complaint herein, and particularly the lands described in the cross complaints, and bills in intervention of these defendants cross complainants, and intervenors defendants, and that the title of complaint to such lands should be quieted.

24. The court erred in holding that the complainant was in possession of all, or any, of the lands described in the cross complaints, and bills of intervention, of these defendants cross-complainants, and intervenors defendants, and in not holding that these defendants cross-complainants, and intervenors defendants were, and have been for a long time prior to the filing of the bill of complaint of the complainant herein in posses-

sion of all and singular the lands described in said cross complaints and bills of intervention.

WHEREFORE, these defendants cross complainants, and intervenors defendants, pray that the decree herein be reversed, and that this court enter a decree in accordance with the prayer of the cross complaints and bills of intervention filed herein, and for such other relief as to these defendants cross-complainants, and intervenors defendants may be proper.

A. W. LAFFERTY,

Attorneys for Defendants cross-complainants, and Intervenors Defendants.

Service of the foregoing assignments of error is hereby acknowledged this 29th day of August, 1918.

PETER F. DUNNE,
WM. D. FENTON, and
JAMES E. FENTON,

Attorneys for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

MILLER, KING, LANE and TRAFFORD,
DOLPH, MALLORY, SIMON and GEARIN,
JOHN C. SPOONER, JOHN M. GEARIN,

Attorneys for Union Trust Company of New York, individually and as Trustee.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1913.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON,)
) ss.
County of Multnomah.)

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 27th day of Aug., 1913.

J. C. McREYNOLDS, Atty. Genl., and
B. D. TOWNSEND, Spl. Asst. to Atty Genl.
By GLENN E. HUSTED,
Spl. Asst. to Attorney General,
Attorney for United States.

CLARENCE L. REAMES, United States Attorney.
By ROBERT R. RANKIN,
Asst. United States Attorney.

(Endorsed) Filed August 29, 1918, A. M. Cannon, Clerk United States District Court, By V. Johnston, Deputy.

And afterwards, on August 29, 1918, there was duly filed in said Court Assignment of Errors of the defendant Oregon and California Railroad Company, as follows, to-wit:

[TITLE]

DEFENDANT OREGON AND CALIFORNIA RAILROAD COMPANY'S ASSIGNMENT OF ERRORS.

The defendant, Oregon and California Railroad Company, complains of errors in the proceedings in this case, in the District Court of the United States, for the District of Oregon, in the above entitled cause, and in the decision and decree rendered, made and entered therein, and assigns the following as the errors complained of:

1.—The Court erred in overruling the demurrer of this defendant to the bill of complaint herein.

2.—The Court erred in overruling and in not sustain-

ing the following grounds of the joint and several demurrer of the defendants, Oregon and California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as trustee, to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity and cannot be maintained as to the "East Side Grant," so-called in said bill of complaint and subject thereof.

3.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without equity, and cannot be maintained as to the "West Side Grant," so-called in said bill of complaint and subject thereof.

4.—The Court erred in overruling and in not sustaining the following grounds of the joint and several demurrer of the said defendants to the bill of complaint of complainant herein:

As against the said defendants and each of them the said bill of complaint is without any equity whatsoever.

5.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "East Side Grant," so-called in said bill of complaint, and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the said "East Side Grant."

6.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief as to the "West Side Grant," so-called in said bill of complaint and subject thereof, or because of or arising out of any facts, particulars, transactions, matters or things in the said bill of complaint set forth or shown about, relating to, or concerning the "West Side Grant."

7. The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree declaring or adjudging forfeiture of all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

8.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree quieting the title to all or any of the lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the bill of complaint herein.

9.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

A decree or order requiring the defendants or any of them to surrender unto complainant possession or control of lands or estates in lands described or referred to in paragraph 1 of subdivision First of the prayer of the said bill of complaint herein.

10.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction requiring the said defendants, or any of them, to do or perform any of the acts or things set forth or mentioned in paragraph 3 of subdivision First of the prayer of the bill of complaint herein.

11.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order or decree asked for in the Second subdivision of the prayer of the bill of complaint herein:

12.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

The, or any, injunction or restraining order asked for or mentioned in the Fifth subdivision of the prayer of the bill of complaint herein.

13.—The Court erred in overruling and in not sustaining the following grounds of the said joint and several demurrer of the said defendants to the bill of complaint of complainant herein, and in not holding and deciding that:

As against the said defendants, and each of them, the said bill of complaint does not set forth or show any matter, equity or cause, entitling complainant to:

Any relief whatsoever.

14.—The Court erred in holding that the United States, complainant herein, was entitled to the relief prayed for in its complaint herein, or to any relief, and in not holding that the said complaint of said complainant should be dismissed.

15.—The Court erred in holding that the complainant had any right, title or interest in or to the lands described in the decree herein, or any part thereof.

16.—The Court erred in holding that the complainant is the owner in fee simple, or in the possession of said lands, or any part thereof, or entitled to the possession of the same, or any part thereof.

17.—The Court erred in holding that the defendant, the Oregon and California Railroad Company, was not the owner in fee simple and in the possession, and entitled to the possession of said lands, and the whole thereof.

18.—The Court erred in holding that the allegations in said bill of complaint were sustained by the evidence, and in not holding that said bill should be dismissed.

19.—The Court erred in holding that the lands or any thereof, described in the decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any thereof, to the complainant.

20.—The Court erred in holding that the lands and estates in lands in the said decree described, either in whole or in part have become or now are forfeited to, or that the title to the same or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof now are the absolute property of the United States of America,

or are free from any or all claim or claims of right, title or interest or lien in, to, or upon the same or any part thereof by or in favor of this defendant, or the defendant Southern Pacific Company, or the defendant Stephen T. Gage, individually or as trustee, or the defendant Union Trust Company, individually or as trustee, or any party or parties claiming under them, or either or any of them.

21.—The Court erred in holding that the title of complainant to the said lands, or any thereof, should be quieted.

22.—The Court erred in holding that the title of the United States of America to all or any of said lands or estates in lands be or is by said decree quieted or confirmed, or be or is so quieted or confirmed, particularly as to any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, by or in favor of this defendant, or the said Southern Pacific Company, or the said Stephen T. Gage, individually or as trustee, or the said Union Trust Company, individually or as trustee, or each or every party or parties claiming under them, or either or any of them.

23.—The Court erred in holding that complainant was entitled to recover its costs and disbursements herein, and that a decree should be entered to that effect.

24.—The Court erred in holding that:

The complainant herein was or is entitled to any injunction or restraining order in this cause.

25.—The Court erred in holding that this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or the officers or agents of them, or any or either of them, be, or that they, or any or either of them by said decree are or is forever, or at all, enjoined or restrained from claiming or asserting, or from claiming or asserting in any manner any right, title, interest or lien in, to, or upon the said lands, or estates in lands, or any part thereof, or from in any manner selling, conveying, leasing or disposing of any of said lands or estates in lands, or any interest therein, or from negotiating, executing, or recording any document or instrument, or from doing any other act or thing which shall in any manner affect or encumber the title to said lands or estates in lands or any part thereof, or from going upon said lands, or any part thereof, or from cutting, removing or in any manner using or injuring any timber or other natural products thereof, or from committing in any manner trespass upon said lands, or any part thereof, or from using or interfering with in any manner said lands or estates in lands, or any part thereof, or the title or possession thereof, or from contracting with, inviting or inducing, or permitting, or in any manner whatsoever permitting others, or any party to do any of the things aforesaid.

26.—The Court erred in holding as to all or any lands which may hereafter revert, as in paragraph IV of said decree set forth, to this defendant, or to said Southern

Pacific Company, or to said Stephen T. Gage, individually or as trustee, or to said Union Trust Company, individually or as trustee, that this defendant, or the said Stephen T. Gage, or the said Union Trust Company, or any or either of them, shall within sixty days, or any other period of time, from the date that any of said lands shall so revert to said defendants, or any or either of them, or at all, execute or file with the clerk of said court, or otherwise, or at all, any deed of conveyance in due or legal form, or at all, conveying or confirming unto the United States of America all or any of said lands, free from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of said defendants, or either or any of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed or deeds of conveyance, said decree shall operate or shall have the same force or effect as such deed or deeds of conveyance.

27.—The Court erred in holding that within sixty days or any other time, from the date of said decree, or otherwise or at all, this defendant, or said Union Trust Company or said Stephen T. Gage, or any or either of them, shall execute or deliver to the clerk of said court, or otherwise, or at all, a deed of conveyance in due or legal form, or at all, conveying and confirming unto the United States of America all or any of said lands situated in the State of Washington, free or clear from any or all claim or claims of right, title, interest or lien in, to, or upon the same, or any part thereof, in favor of

said defendants, or any or either of them, or otherwise or at all, or that in the event that said defendants, or any or either of them, shall fail to execute or file any such deed of conveyance, said decree shall operate or shall have the same force or effect as such deed of conveyance.

28.—The Court erred in holding that the above mentioned defendant, Union Trust Company, had no lien on said lands or any part thereof, and in holding that the lien of said defendant evidenced by deed of trust of date July 1, 1887, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

29.—The Court erred in holding that the above mentioned defendant, Stephen T. Gage, as trustee, or the said Southern Pacific Company, had no lien on said lands or any part thereof, and in holding that the lien of said Stephen T. Gage, as trustee, evidenced by deed of trust of date June 2, 1881, was of no avail and without force or effect and did not express or constitute any right, charge or lien in or upon the said lands, or any part thereof, and should be set aside and cancelled.

30.—The Court erred in holding that said Union Trust Company of New York, as trustee for the owners and holders of bonds issued under and by virtue of trust mortgage of July 1, 1887, was not entitled to the rights, or to all or any of the rights of an innocent purchaser for value.

31.—The Court erred in holding that whatever interpretation might be given to the proviso touching actual settlers of said act of April 10, 1869, or whether the same created a condition subsequent or not, said Union Trust Company of New York was not not entitled to a lien upon the right of way and the whole land grant of the said act of July 25, 1866, as security for the sum of twenty million dollars, as provided in its mortgage of July 1, 1887, and in holding that said Union Trust Company was not entitled to have said lien impressed upon said right of way and said entire land grant to be satisfied first and before forfeiture or reversion to the complainant, or said United States of America, if forfeiture or reversion should be decree.

32.—The Court erred in holding that the right to forfeiture for breach of condition subsequent is not a right that may be waived, and in holding that in this case, as to said Union Trust Company, said right, if it ever existed, was not waived by said complainant and said United States of America, and in holding that said complainant and said United States of America is not estopped to allege a breach of such condition or to pray or have forfeiture as against said defendant, said Union Trust Company of New York.

33.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of July 25, 1866, mentioned in the bill of complaint and entitled "An Act granting lands to aid in the construction of a railroad

and telegraph line from the Central Pacific Railroad in California, to Portland, in Oregon," or any amendment thereof, is expressed by the proviso as to sale to actual settlers, contained in the act of Congress of April 10, 1869, referred to in said bill, and entitled, "An act to amend an act entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.' "

34.—The Court erred in holding that the paramount and primary purpose in making the said land grant was other than to aid in the construction of a railroad, as expressed in the said act of July 25, 1866.

35.—The Court erred in holding that the paramount and primary purpose of Congress touching the land grant under the act of Congress of May 4, 1870, mentioned in the bill of complaint, and entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," was other than to aid in the construction of a railroad as expressed in said last mentioned act.

36.—The Court erred in holding that this defendant, or said Southern Pacific Company or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had at any time violated any provision of said act of July 25, 1866, or of said act of April 10, 1869, or of

said act of May 4, 1870, or more particularly any clause or provision either in said act of April 10, 1869, or in said act of May 4, 1870, relative to actual settlers.

37.—The Court erred in holding that in respect to the said land grants, or either of them, there had been any application thereof by the grantees of the same, or either of them, or their successors in interest, or by this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, other than in fulfillment of and compliance with the paramount and primary purpose of Congress in making the said land grants, or either of them.

38.—The Court erred in holding that the application of the land grant under the said act of July 25, 1866, denominated by way of distinction the East Side Grant, to the construction of the railroad contemplated therein, by way of a mortgage or deed of trust of said land grant to raise funds, or refund the same, for the construction of such railroad, was a violation of any congressional intent or legislation in the premises or other than a fulfillment of and compliance with the intent and legislation of Congress.

39.—The Court erred in holding that the application of the said East Side Grant to the construction of the railroad contemplated in said act of July 25, 1866, by way of a deed of trust or mortgage of said land grant to raise funds, or to refund the same, for the construction of such railroad, was in subjection and subordination to,

and restricted by, the proviso in said act of April 10, 1869, relative to actual settlers.

40.—The Court erred in holding that any sale or sales of lands forming part of said East Side Grant, pursuant to the mortgage or mortgages, deed, or deeds of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness, so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with, the policy, intent and legislation of Congress.

41.—The Court erred in holding that the lands of said East Side Grant, or any part thereof, had been sold in breach or violation of any provision of the said act of July 25, 1866, or of said act of April 10, 1869.

42.—The Court erred in holding that the grantee of said East Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same, or any part thereof, in breach of any act of Congress or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress in the premises.

43.—The Court erred in holding that the application of the land grant under the said act of May 4, 1870, denominated, by way of distinction, the West Side Grant, to the construction of the railroad therein contemplated, by way of a mortgage or deed of trust of said grant to raise funds, or to refund the same, for the construction of such railroad was in breach of any provision of said last mentioned act, or in violation of any congressional intent or legislation in the premises, or other than a fulfillment of and compliance with the intent and legislation of Congress.

44.—The Court erred in holding that the application of the said West Side Grant to the construction of the railroad contemplated in said act of May 4, 1870, by way of a mortgage or deed of trust of said grant to raise funds, or refund the same for the construction of such railroad, was in subjection and subordination to and restricted by anything in said last mentioned act as to actual settlers.

45.—The Court erred in holding that any sale or sales of lands forming part of said West Side Grant, under any mortgage or deed of trust of said grant for the purpose of raising such construction funds, or refunding the same, and the application of the proceeds of such sale or sales in redemption of such construction indebtedness so secured or refunded, constituted any departure from or violation of any purpose or enactment of Congress in the premises, or were other than a fulfillment of and compliance with the policy, intent and legislation of Congress.

46.—The Court erred in holding that the lands of said West Side Grant, or any part thereof, had been sold in breach of any provision of the said act of May 4, 1870.

47.—The Court erred in holding that the grantee of said West Side Grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, had dealt, or failed, refused, or omitted to deal with the said lands, or any part thereof, or sold or disposed of the same or any part thereof, in breach of said act of May 4, 1870, or otherwise than in fulfillment of and compliance with the policy, intent and legislation of Congress, in the premises.

48.—The Court erred in not holding that:

The proviso in the Act of Congress of April 10, 1869, to-wit, "That the lands granted by the Act aforesaid shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents ($2.50) per acre", is void for uncertainty.

49.—The Court erred in not holding that the said proviso is a purely directive, regulative covenant.

50.—The Court erred in not holding that the said proviso is unenforceable by the United States, because its interest is purely nominal.

51.—The Court erred in not holding that the said granted lands, East Side and West Side, both or either, are timbered in character and were and are not capable of actual settlement.

52.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been done away with by the act of Congress of June 25, 1868, mentioned in the bill of complaint, and entitled, "An act to amend an act, entitled, 'An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon.'"

53.—The Court erred in holding that the provision in said act of July 25, 1866, as to the filing of assent had not been waived by said act of June 25, 1868.

54.—The Court erred in holding that said provision as to the filing of assent had not been repealed by said act of June 25, 1868.

55.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868.

56.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the designation of the Oregon Central (East Side) Railroad Company, by the legislature of Oregon, on October 20, 1868.

57.—The Court erred in holding that said provision as to the filing of assent had not been discharged and extinguished by said act of June 25, 1868, in connection with the construction work, previous thereto, of the Oregon Central (East Side) Railroad Company, and with the subsequent designation of said last named company by the legislature of Oregon, on October 20, 1868.

58.—The Court erred in holding that said provision as to the filing of assent attached itself to any right, title or interest of the grantee of said East Side grant, or its successors in interest, or this defendant, or said Southern Pacific Company, or said Stephen T. Gage, individually or as trustee, or said Union Trust Company, individually or as trustee, or any or either of them, by or through any estoppel, consent, legislative obligation, covenant, condition or otherwise, because of the action of said East Side Company in filing written assent on June 30, 1869, or at any other time, or in taking any step or steps to bring the attention of Congress to the matter of such assent, or to procure any action by Congress in that behalf, if any such step or steps were taken, or in applying to Congress, if such application there was, for leave to file such assent, or otherwise, or at all.

59.—The Court erred in holding that said provision as to the filing of assent, in respect to said East Side grant, was a condition, either precedent or subsequent.

60.—The Court erred in holding that the proviso in respect to settlers in said act of April 10, 1869, was a

question in the case requiring judicial determination.

61.—The Court erred in holding that any imposition by Congress under said proviso of any qualification, restriction, limitation, or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity.

62.—The Court erred in holding that any imposition by Congress under said proviso, of any qualification, restriction, limitation or burden upon the estate granted under said act of July 25, 1866, was within the power of Congress to enact, or other than a nullity, regard being had to the rights of the California and Oregon Railroad Company, a California corporation, under said act of July 25, 1866, and to the vested interests, accruing under said act to said last named corporation in virtue of its acceptance of said act, and its conduct, construction and expenditures thereunder and pursuant thereto.

63.—The Court erred in not holding that the Act of Congress of July 25, 1866, pleaded in the bill of complaint in this cause, was and is a single grant, of the lands described therein, to the California and Oregon Railroad Company organized under the laws of California and to such company organized under the laws of Oregon as the legislature of the latter state should thereafter designate, for the purpose of aiding the said companies in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon.

64.—The Court erred in not holding that the said grant under said Act of Congress was entire and not severable, and upon the filing of assent to said Act in the Department of Interior by either of said companies within one year after the passage thereof and the completion of the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, the said Act became operative and vested in the company complying therewith an interest in the entire grant.

65.—The Court erred in not holding that the California and Oregon Railroad Company filed its assent to said Act in the Department of the Interior within one year after the passage thereof and completed the first section of twenty miles of said railroad and telegraph line within two years after the passage thereof, and that thereupon said act became operative and vested in said California and Oregon Railroad Company an interest in the entire grant.

66.—The Court erred in not holding that when the California and Oregon Railroad Company filed its assent to said Act of Congress of July 25, 1866, in the Department of the Interior within one year, and completed the first section of twenty miles of said railroad and telegraph line, within two years after the passage of the said act, Congress was without lawful authority to annex a new condition, by amendment or otherwise, to the land grant.

67.—The Court erred in not holding that had the

legislature of Oregon failed to designate a company to construct said railroad and telegraph line in Oregon, the California and Oregon Railroad Company, upon compliance with the provisions of said act of July 25, 1866, had the right and it was authorized by said act to construct the entire railroad and telegraph line from the Central Pacific in California to Portland in Oregon and thereby earn, and become entitled to, the entire land grant under said act.

68.—The Court erred in not holding that the said Act of Congress of July 25, 1866, authorized the California and Oregon Railroad Company to construct any part or all of the said railroad and telegraph line provided the legislature of Oregon failed to designate a company as provided by said act, or such company failed to file its assent to said act.

69.—The Court erred in not holding that the said act of Congress of July 25, 1866, was, as to said California and Oregon Railroad Company, a grant in presenti, of the odd-sections of lands within the limits therein specified, along the line of said railroad from the Central Pacific Railroad in California to Portland in Oregon.

70.—The Court erred in not holding that at the time of the passage of the act of Congress of April 10, 1869, pleaded in the bill of Complaint herein, the California and Oregon Railroad Company had fully complied with all of the terms of said act of July 25, 1866, as amended

by the act of June 25, 1868, which were required to be performed up to the time of the passage of said act of April 10, 1869.

71.—The Court erred in not holding that prior to the passage of said act of April 10, 1869, pleaded in the bill of complaint herein, the California and Oregon Railroad Company had acquired a vested interest in the whole of the lands granted by said act of July 25, 1866, and the said act of April 10, 1869, annexing a condition to the entire grant was void.

72.—The Court erred in not holding that the said grant under the said act of Congress of July 25, 1866, being single and entire and said act of April 10, 1869, being void as to the California and Oregon Railroad Company, as to the whole of said grant, it is void as to the portion of said grant situated in the State of Oregon.

73.—The Court erred in not holding that the said act of Congress of April 10, 1869, was void in that it requires that the interest acquired by the California and Oregon Railroad Company in the lands granted by said act of July 25, 1866, shall be sold to actual settlers only, in quantities not greater than one quarter section to one purchaser and at a price not exceeding two dollars and fifty cents ($2.50) per acre, as a condition of an extension of time to the company designated by the legislature of Oregon, to file its assent to said act of July 25, 1866.

74.—The Court erred in not holding that the said

act of Congress of July 25, 1866, did not require that both of the companies mentioned therein should file assent to said act or construct said railroad and telegraph line, but said act was satisfied and became operative if either of the said companies filed its assent in the Department of the Interior within one year, after the passage of said act, and completed construction of its said railroad and telegraph line within the time provided in said act and the act of June 25, 1868, amendatory thereof.

75.—The Court erred in not holding that after performance by the said California and Oregon Railroad Company, of all conditions imposed by the act of July 25, 1866, and the same as amended by the act of June 25, 1868, required to be performed prior to April 10, 1869, it acquired and possessed a vested right in the whole of said land grant and Congress was thereby deprived of the power and was without authority to "add to, alter, amend or repeal" the said act of July 25, 1866, in any way that would tend to embarass, delay or defeat the construction of either or any portion of said railroad and telegraph line, or in any way that would tend to interfere with any vested rights in said grant.

76.—The Court erred in holding that the said proviso in respect to settlers in said act of April 10, 1869, was a condition precedent.

77.—The Court erred in holding that the said proviso in said act of April 10, 1869, was a condition subsequent.

78.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of said proviso.

79.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition precedent.

80.—The Court erred in holding that any provision in said act of May 4, 1870, touching sales to actual settlers, was a condition subsequent.

81.—The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision in said act of May 4, 1870, touching sales to actual settlers.

82.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect either to said East Side grant, or to said West Side Grant, or any part thereof.

83.—The Court erred in holding that there was any cause of action or foundation of jurisdiction in respect to either of said grants, in any re-entry for breach of condition, or legislative equivalent thereof, or in any legislative declaration of forfeiture.

84.—The Court erred in holding that there was jurisdiction in the Court on the equity side of the cause or subject matter of this suit, and in not dimissing the bill of complaint.

85.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture of said East Side Grant for the breach of an assumed condition subsequent, if such breach there was, in said proviso of said act of April 10, 1869.

86.—The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

87.—The Court erred in holding that the complainant was entitled to a decree quieting its title to either of said grants against this defendant, said Southern Pacific Company, said Stephen T. Gage, individually or as trustee, and said Union Trust Company, individually or as trustee, or any or either of them, or any party to the cause.

88.—The Court erred in holding that as foundation for a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company, or its grantees, if such there were, did not have the legal title to such grants.

89.—The Court erred in holding that as foundation for a suit to quiet title to either of said grants, or any part thereof, the complainant was in possession of the

said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company, or its grantees, if such there were, did not have the possession of the same.

90.—The Court erred in holding, as foundation for a suit by complainant to quiet title to the said grants, or either of them, or any part thereof, that the same had not been reduced to posession, and were unoccupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

91.—The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, or its grantees, if such there were, did not have possession of the said grants, or either of them.

92.—The Court erred in not holding that at the time of the filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all the lands of which forfeiture is sought by said bill of complaint against this defendant and said Southern Pacific Company, and Stephen T. Gage, individually and as trustee, and against said Union Trust Company, individually and as trustee.

93.—The Court erred in holding that the said proviso

of said act of April 10, 1869, or any provision of said act of May 4, 1870, touching actual settlers in anywise or at all affected the title to the lands or any part thereof, either of said East Side or of said West Side Grant.

94.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

95.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been waived by Congress and complainant.

96.—The Court erred in holding, on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to said East Side Grant, that any breach of such assumed condition subsequent or any assumed cause of forfeiture, had not been acquiesced in by Congress and complainant.

97.—The Court erred in holding, on the assumption of a condition subsequent in any provision of said act of May 4, 1870, touching actual settlers, or on the as-

sumption of any cause of forfeiture in respect to said West Side Grant, that any breach of such assumed condition subsequent, or any assumed cause of forfeiture had not been acquieseed in by Congress and complainant.

98.—The Court erred in holding on the assumption of a condition subsequent, in respect to the said proviso, or on the assumption of any cause of forfeiture in respect to the said East Side Grant, that as to any breach of such assumed condition subsequent, or assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

99.—The Court erred in holding, on the assumption of a condition subsequent, in any provision of said act of May 4, 1870, touching actual settlers, or on the assumption of any cause of forfeiture in respect to said West Side Grant, that as to any breach of such assumed condition subsequent, or any assumed cause of forfeiture, the complainant herein was not estopped to assert the same.

100.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acquiesence in the many deeds of conveyance made by the defendant, Oregon and California Railroad Company, with the knowledge of Congress and complainant.

101.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by acceptance and use of the said railroad.

102.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 1870, is a condition subsequent, that Congress and the complainant have waived the breach thereof by annual issuance of patents to said lands from 1871 down to 1906.

103.—The Court erred in not holding, on the assumption that the said proviso in the said act of April 10, 1869, or said provision in said act of May 4, 187*v*, is a condition subsequent, that Congress and the complainant have waived the breach thereof by the passage by Congress of the Forfeiture Acts of January 31, 1885, and September 29, 1890.

104.—The Court erred in not holding that this suit as to all lands patented prior to October, 1902, was and is barred by the Acts of Congress of March 3, 1891, and March 2, 1896.

105.—The Court erred in not holding that all causes of action presented by the bill of complaint herein are barred by laches and the Statutes of Limitations.

106.—The Court erred in holding that the primary and controlling purpose of Congress in the Act of July 25, 1866, and acts amendatory thereof, was to provide for the sale of the granted land to actual settlers, or in that behalf, that said lands were capable of actual settlement.

107.—The Court erred in not holding that the primary object of the act of April 10, 1869, was to extend the time for the construction of the said railroad and not to impose a condition or trust upon the grant already made.

108.—The Court erred in not holding that the proviso for the sale of the lands granted to actual settlers, contained in the act of April 10, 1869, and the provision as to settlers in the Act of May 4, 1870, are, and each of them is, void because the same is repugnant to the grant and tends to defeat and destroy the primary purpose and intent of Congress in making the said grants in aid of the construction of the said railroads and telegraph lines.

109.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said lands to actual settlers, was intended only to apply to such actual settlers as were, at the dates of the acts of July 25, 1866 and May 4, 1870, in actual possession of said portions of said granted lands or who might become actual settlers before the filing of the map of survey.

110.—The Court erred in not holding, on the assumption that the said provisions in the said acts of April 10, 1869 and May 4, 1870, for the sale of said granted lands to actual settlers, were conditions subsequent, that Congress and complainants waived any breach of said provisions or right to forfeiture by:

(a) Permitting the said grants to be administered by the grantees and their successors for a period of over thirty-eight years prior to the passage of the joint resolution of April 3, 1908, and prior to the commencement of this suit on the 4th day of September, 1908, with the knowledge of Congress and complainant; and

(b) The passage of the act of June 25, 1868; and

(c) The passage of the forfeiture act of January 31, 1885; and

(d) The repeated refusal of Congress to pass any other forfeitrue act than the general statute on that subject; and the forfeiture act of September 29, 1890; and

(e) The continous and regular issuance by complainant of patents to said granted lands.

111.—The Court erred in not holding, on the assumption that the act of July 25, 1866, constituted and was a single grant, and so as to the West Side Grant, both or either, that a waiver on the part of Congress and the complainant of any breach of the proviso or clause as to sales to settlers in said grants, or either of them, and

of forfeiture on account thereof, as to a portion of the same, with knowledge on the part of Congress and the complainant, was a waiver as to the entire grants, both or either.

112.—The Court erred in not holding, on the assumption that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to sales of said granted lands to actual settlers, are conditions subsequent, that each of said conditions subsequent is void for the following reasons:

(a) It is retroactive and its effect would be to divest the title of defendant, Oregon and California Railroad Company; and

(b) It is in restraint of and prohibits alienation except as to a particular class of persons; and

(c) The restraint on alienation is inconsistent with the purpose of the grant and the estate granted; and

(d) The said condition does not fix a definite time within which any of the lands shall be sold to actual settlers; and

(e) The said condition does not define who is an actual settler; and

(f) The sale of said lands is wholly dependent upon there being actual settlers thereon, an uncertain event, and the restraint contained in said provisions amounts to a perpetuity; and

(g) Because said conditions do not contain any

clause of re-entry or forfeiture for a violation thereof.

113.—The Court erred in not holding that the complainant by its conduct in relation to the lands granted by said acts of Congress has waived, and is estopped from claiming, a forfeiture thereof.

114.—The Court erred in not holding that the grantees under said acts of Congress or their successors, associates or assigns, had the right to mortgage the whole or any part of said land grant to obtain money wherewith to construct the said railroad and telegraph line.

115.—The Court erred in not holding that under the terms and provisions of the said act of Congress of April 10, 1869, and of May 4, 1870, the grantee or grantees mentioned in said land grants cannot and could not perform the said provisions as to the sale of the lands granted to actual settlers, and by reason thereof, performance of said provisions was excused and the said granted lands vested in said grantees absolutely and discharged of said conditions.

116.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, as to the sale of the lands granted by said acts to actual settlers was and is unilateral and void in that actual settlers are not bound to purchase and the grantees under said grants could not compel settlers to purchase any portion or portions thereof.

117.—The Court erred in not holding that the

grantee or grantees under said land grants in any event were required to sell to actual settlers only during the construction of the said railroad.

118.—The Court erred in not holding that during the period of construction of said railroad there were no actual settlers on any portion of said land grants, and for that reason a sale thereof could not be made to actual settlers in any quantity, and by reason thereof the said grantee or grantees under said land grants took the same, discharged of any provision for the sale thereof to actual settlers.

119.—The Court erred in not holding that during the construction of said railroad it was impossible for the said grantee or grantees under said land grants to sell any portion of said grants to actual settlers, and that by reason thereof such sale was excused and the title to said granted land in Oregon and the whole thereof vested in the said defendant, Oregon and California Railroad Company.

120.—The Court erred in not holding that the proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, if and when operative, was directive to the Oregon and California Railroad Company to sell to actual settlers only, land in quantities not greater than one quarter section to one purchaser, and for a price not exceeding Two Dollars and fifty cents ($2.50) per acre, and did not prohibit the sale of said granted lands to persons other than actual set-

tlers in any quantity and at any price.

121.—The Court erred in not holding that the purpose of the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, for the sale of said granted lands to actual settlers in quantities not exceeding one quarter section to each purchaser and at a price not exceeding Two Dollars and fifty cents ($2.50) per acre, was to give to actual settlers an option to purchase lands in said grants on said terms and not intended to prohibit the said Oregon and California Railroad Company from selling the lands in said grants to others than actual settlers in any quantity and at any price.

122.—The Court erred in not holding that Congress, in passing the act of April 10, 1869, and the act of May 4, 1870, contemplated two classes of persons to whom said granted lands would be sold in aid of the construction of said railroad, namely, actual settlers in possession of some portion of said grant, and persons who are not actual settlers and who are not in possession of any portion of said grant.

123.—The Court erred in not holding that the said proviso in the act of April 10, 1869, and the provision in the act of May 4, 1870, are, and each of them is, in restraint of alienation and void in that:

(a) It limits the time during which the property can be held by the grantee.

(b) It provides for the alienation to a limited class of persons.

(c) It limits the amount of land which may be sold to any one person.

(d) It limits the price at which it can be sold.

124.—The Court erred in holding that the said land grants did not become operative until the Railroad Company filed its assent to the terms and conditions of Section Six of the act of July 25, 1866, as amended April 10, 1869.

125.—The Court erred in holding that issuance of patents to said lands by the land department was not a waiver on the part of the complainant of the right to insist upon the performance by the Railroad Company of the provisions in said grants as to the sale of lands to actual settlers.

126.—The Court erred in holding that the act of Congress of April 10, 1869, was a renewal or revival of the grant under the act of Congress of July 25, 1866, or that the said act of April 10, 1869, was other than a waiver of the right of forfeiture on account of any of the conditions in said grant.

127.—The Court erred in holding that at the time of the passage of the said act of Congress of April 10, 1869, the said land grant under the act of Congress of July 25, 1866, had lapsed.

128.—The Court erred in not holding that this suit cannot be maintained as one to enforce forfeiture nor to quiet title, because—

(a) Neither the United States nor Congress had declared a forfeiture; and

(b) The fact of forfeiture has not been adjudicated by a court of law; and

(c) The defendant, Railroad Company, holds the legal title to and the possession of said granted lands.

129.—The Court erred in not holding that the said defendant, Oregon and California Railroad Company, was entitled to a trial by jury of the issue as to whether or not any of the conditions of said grants, or either of them, had been breached.

130.—The Court erred in not holding that the complainant and Congress had knowledge of all the alleged breaches of the provisions in each of said land grants for the sale of the granted lands to actual settlers; and that the complainant and Congress acquiesced in said breaches, with the knowledge thereof, and complainant is estopped to claim a forfeiture of said land grant or any part thereof.

131.—The Court erred in not holding that during the year 1879, down to and including the year 1908, reports were regularly and semi-annually made of the transactions of the land department of said defendant

Oregon and California Railroad Company to the Auditor of Railroad Accounts created by the Act of Congress of June 19, 1878, showing the total cash receipts from all sales of the said granted lands to the date of said report; the average price per acre for all sales to the date of said report, and the average price per acre for all sales during the half year; the average price per acre for all purchases to the date of said report; the maximum price per acre from sales (not town lots); the minimum price per acre from sales (not town lots); the maximum price per acre asked at the time of making such report; the minimum price per acre asked at the time of making such report; and that the Auditor of Railroad Accounts, pursuant to the provisions of the said Act of Congress of June 19, 1878, made like annual reports during the whole of said period to the Secretary of the Interior, and that annually during the whole of said period the Secretary of the Interior transmitted the said reports to Congress, and that said reports showed that during the year 1879, down to and including the year 1908, the said defendant Oregon and California Railroad Company sold some of said granted lands at a price in excess of Two Dollars and Fifty Cents ($2.50) per acre; also in quantities exceeding one hundred and sixty (160) acres; and that Congress and complainant, with the knowledge of the said matters and things contained in said reports, acquiesced therein and permitted the said defendant railroad company to take action accordingly and to alter its position and to continue to so administer said grant,

and that complainant was, and is, therefore, estopped from claiming a breach of any of the conditions, if such there be, in said grant, or a forfeiture on account thereof, and has waived said alleged breaches and acquiesced therein.

132.—The Court erred in not holding that the complainant was estopped by the acts of the Secretary of the Interior in approving, as bases of lieu land selections, deeds conveying property sold in alleged violation of the said provisions in said grants as to the sale of said granted lands to actual settlers only.

133.—The Court erred in holding that the "East Side Company," so-called, by accepting the grant under the Act of Congress of July 25, 1866, as amended by the Act of April 10, 1869, was estopped from denying the right or power of Congress to pass an Act imposing any conditions repugnant to the original grant.

134.—The Court erred in not holding that the Act of Congress of July 25, 1866, granting the lands therein described to aid in the construction of a railroad and telegraph line, without any direction as to the manner of sale or disposition thereof, to aid in such construction, said railroad company had the right to sell or mortgage the whole of said granted lands for such purpose.

135.—The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to

the decree rendered herein.

136.—The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered herein.

137.—The Court erred in not holding that the evidence in the above-entitled cause was wholly insufficient to sustain and support the decree rendered in said cause, in that there is no evidence in the record showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of said granted lands to actual settlers, only, in quantities not exceeding one hundred and sixty acres to one purchaser and at a price not exceeding Two Dollars and Fifty cents ($2.50) per acre.

138.—The Court erred in not holding that the evidence in said cause was insufficient to support the decree rendered herein or any decree in favor of complainant in that there is no evidence in this cause showing any breach or violation of the proviso in the act of Congress of April 10, 1869, or of any of the provisions of the act of Congress of May 4, 1870, as to the sale of the said granted lands to actual settlers.

139.—The Court erred in not holding that the evidence in this cause was wholly insufficient to sustain the decree rendered herein or any decree in favor of complainant, in that there was no evidence on which to base a decree of forfeiture of the lands or estates in

lands described in the bill of complaint herein, for any alleged breach of any condition in either of said acts of Congress.

140.—The Court erred in rendering the judgment and decree herein against the said defendant, Oregon and California Railroad Company, forfeiting the lands and estates in lands described in the said decree, or any of said lands, in that there is no evidence whatever in the record in this cause showing that the said defendant violated or breached any condition in either of the said acts of Congress of July 25, 1866, June 25, 1868 or April 10, 1869, or May 4, 1870.

141.—The Court erred in holding that the patents issued in respect to the said land grants, or either of them, or any part thereof, were not conclusive against complainant as to any breach of assumed condition subsequent, or any forfeiture resulting therefrom, or from any cause whatever.

142.—The Court erred in holding that the title to so much of either of said grants as had been patented was not concluded against complainant herein by the acts of Congress of March 3, 1891 and March 2, 1896.

143.—The Court erred in holding that the title to so much of either of said grants as had been patented prior to October 1902, was not concluded against complainant herein and that the alleged cause of action had not been barred, and the title to such patented lands made absolute.

144.—The Court erred in holding that the grant of lands under the act of July 25, 1866, had lapsed at the time of the passage of the act of Congress of April 10, 1869; and at the same time holding that the proviso in said act of April 10, 1869, for the sale of said granted lands to actual settlers, is a condition subsequent, and in not holding in such behalf that a condition subsequent must attach to a title or grant previously existing, or to a title or grant created at the same time the condition subsequent is imposed.

145.—The Court erred in not holding that a condition subsequent which may defeat a grant, if breached, must be imposed in the same act creating the grant, or if imposed in a subsequent act, then the act creating the grant must reserve the right to impose or annex such condition.

146.—The Court erred in not holding that the act of Congress of April 10, 1869, was not a new grant or a revival of the old grant, but a waiver of a right to forfeiture of the grant already made under the act of July 25, 1866.

147.—The Court erred in not holding, assuming the said "actual settler clause" in each of said acts of Congress to be a condition subsequent, and certain, and definite, so as to be enforceable that it was repugnant to the grant and is void.

148.—The Court erred in not holding that if actual

settlers did not apply to purchase the granted land and if they were not sold by or before the time following completion and acceptance of the road, then, and thereafter the said "actual settler" clause in each of said acts became inoperative and whether the words of the "actual settler" clause created a covenant or condition, the railroad company took an estate in the unsold lands absolute and unconditional.

149.—The Court erred in not holding that it is the duty of the land department of the United States to administer the land laws thereof and to determine in the first instance who are "actual settlers"; and that the proviso in the act of April 10, 1869, and the provisions in the act of May 4, 1870, in that regard, are and each of them is void, and that it was beyond the power of Congress to impose upon the Railroad Company a function belonging exclusively to the land department of the United States.

150.—The Court erred in not holding that the said provisions in the act of April 10, 1869, and the provisions in the act of May 4, 1870, as to the sale of such lands to actual settlers are and each of them is void, in that no method or procedure is provided in either of said acts whereby it can be determined who are actual settlers within the meaning of either of said provisions; and the question as to who are actual settlers upon such granted lands is a question committed by the laws of the United States to the land department thereof.

WHEREFORE, this defendant, Oregon and California Railroad Company, prays that the said decree herein—except so much thereof as—(1) dismisses the cross-complaints of the defendants—cross-complainants and the complaints in intervention of the interveners-defendants, and, (2) adjudges that the complainant's prayer for an accounting be denied, and, (3) excepts from the operation of the decree, all right of way and station grounds, as established and in actual use at the date of said decree in the operation of this defendant's railroad, and, (4) provides that the said decree shall not apply to reservations or exceptions, in contracts or deeds of conveyance, executed by or on behalf of this defendant in the sale of any lands granted by the aforesaid act of July 25, 1866, as amended, or by said act of May 4, 1870, of right of way for the main track of the railroad of this defendant, as actually constructed, established, and in operation at the date of said decree—be reversed, and that this Court enter a decree in accordance with the prayer of the answer and amendments thereto of this defendant, and the defendant, Southern Pacific Company, and Stephen T. Gage, individually and as trustee filed herein, and adjudging that the bill of complaint herein be dismissed, and for such other relief to this defendant, said Southern Pacific Company, said Stephen T. Gage, individually and as trustee, and said Union Trust Company, individually and as trustee, as may be proper.

PETER F. DUNN,
WM. D. FENTON,
and JAMES E. FENTON,

WM. F. HERRIN,
Of Counsel.

Solicitors and Attorneys for said Defendant, Oregon and California Railroad Company.

Service of the foregoing assignment of errors admitted this 29th day of Aug. 1918.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, John L. Snyder, Julius F. Prahl, Albert E. Thompson, James Barr, Fred Witte, W. A. Anderson, W. H. Anderson, O. M. Anderson, F. E. Williams, Paul Birkenfeld, J. H. Lewis, Francis S. Wiser, W. E. Anderson, Albert Arms, Joseph A. Maxwell, Isaac McKay, J. R. Peterson, D. MacLafferty, Edgar MacLafferty, V. V. McAboy, George C. MacLafferty, George Edgar MacLafferty, E. L. MacLafferty, B. N. MacLafferty, Enos M. Fluhrer, F. W. Floeter, and S. Shryock.

A. W. LAFFERTY,

Solicitors and Attorneys for said defendants cross complainants, Sidney Ben Smith, Orrin J. Lawrence, Robert G. Balderree, Oscar E. Smith, Egbert C. Lake, C. W. Sloat, Jesse F. Holbrook, A. E. Haudenschield, S. H. Montgomery, W. A. Noland, James C. O'Neill, Alexander Fauske, Francis Wiest, Cordelia Michael, John B. Wiest, Cyrus Wiest, John Wiest, Thomas

Manley Hill, Otto Nelson, Jasper L. Hewitt, B. L. Porter, Frank Wells, C. P. Wells, I. H. Ingram, L. G. Reeves, W. W. Wells, F. M. Rhoades, Roy W. Minkler, and Marvin Martin.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Arthur L. Golder, George W. Trefen and Lewis J. Trefen.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners William E. Carter, Frank Carter and William H. Prentice.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

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PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

DISTRICT OF OREGON)
) ss.
County of .....)

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 29th day of August 1913, by receiving a copy thereof, duly certified to by,

J. C. McREYNOLDS, Atty. Genl., and
B. D. TOWNSEND, Spl. Asst. to Atty Genl.
By GLENN E. HUSTED,
Spl. Asst. to Attorney General,
Attorney for Complainant.

CLARENCE L. REAMES, United States Attorney.
By ROBERT R. RANKIN,
Asst. United States Attorney.

(Endorsed) Filed August 29, 1913, A. M. CANNON, Clerk United States District Court.

And on August 29, 1913, there was duly filed in said court Assignments of Errors of John H. Haggett and others, defendants and cross-complainants, and William F. Slaughter and others, interveners, in words and figures as follows, to-wit:

(TITLE)

And they do and each of them does complain of errors in the proceedings in the above entitled cause, in the District Court of the United States for the District of Oregon and in the decision, judgment and decree made and rendered therein, and entered therein on the first day of July, 1913, at the March, 1913 term of said court, which said judgment and decree and the substance thereof is set forth and described in the joint and several petition for appeal of the defendants, defendants-cross-complainants and interveners herein herewith filed, and to which proceedings, decision, judgment and decree these assignments of error pertain and relate,

And these interveners and cross-complainants do say and each of them says that said proceedings were and are, and said decision, judgment and decree was and is against the just rights of these interveners and each of them and against the just rights of these complainants and each of them,

And there being many parties hereto and many others similarly situated, for the purpose of simplifying

the record and preventing a great multiplicity of and duplication of the assignments of error herein, these assignments of error are made by all and each of the parties hereto on their own behalf and on behalf of each of them, with the intent that each assignment shall be considered and taken as the assignment of each person and of all persons on behalf of whom it may apply and be pertinent,

And in that behalf and for that purpose these interveners and these cross-complainants do and each of them does, jointly and severally assign the following as errors complained of and intended to be urged by them and each of them upon said appeal, that is to say:

1

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the cross-complaint of the defendant, John H. Haggett and the other defendants with him in his said bill joined, for want of equity in said bill, and

2

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the cross-complaint of said defendants, for want of equity in said bill, and

3

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

4

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the cross-complaint of said defendants, for want of equity in said bill, and

5

The Court erred in sustaining the motion of the complainant for an order striking the cross-complaint of said defendants, and in granting and entering the order striking said bill, for want of equity in said bill, and

6

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said cross-complaint, and

7

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said cross-complaint, and

8

The Court erred in not requiring the complainant to answer said cross-complaint, and

9

The Court erred in not granting to said defendants and each of them, the relief prayed for by them and each of them respectively, in said bill, and

10

The Court erred in not granting to said defendants or any of them, any equitable relief, as

Said cross-complaint contains allegations and matters entitling said defendants and each of them to equitable relief, and

Said cross-complaint contains allegations and matters entitling said defendants and each of them to the relief prayed for by them and each of them respectively, in said bill.

11

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, William F. Slaughter and the other interveners with him in his said bill joined, for want of equity in said bill, and

12

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

13

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

14

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

15

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

16

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

17

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

18

The Court erred in not requiring the complainant to answer said bill in intervention, and

19

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

20

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

21

The Court erred in sustaining the demurrer of the efendants, Oregon & California Railroad Company, outhern Pacific Company and Stephen T. Gage, in- ividually and as Trustee, to the bill of intervention f the intervener, Edward D. Townsend, and the other nterveners with him in his said bill joined, for want f equity in said bill, and

22

The Court erred in sustaining the demurrer of the efendant, Union Trust Company, individually and as rustee, to the bill of intervention of said interveners, or want of equity in said bill, and

23

The Court erred in sustaining the motion of the efendants, Oregon & California Railroad Company, outhern Pacific Company and Stephen T. Gage, in- ividually and as Trustee, to strike the bill of interven- on of said interveners, for want, of equity in said bill, nd

24

The Court erred in sustaining the motion of the efendant, Union Trust Company, individually and as rustee, to strike the bill of intervention of said inter- eners, for want of equity in said bill, and

25

The Court erred in sustaining the motion of the

complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

26

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

27

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

28

The Court erred in not requiring the complainant to answer said bill in intervention, and

29

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

30

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and

matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

31

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John Burbee, and the other interveners with him in his said bill joined, for want of equity in said bill, and

32

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

33

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

34

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

35

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

36

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

37

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

38

The Court erred in not requiring the complainant to answer said bill in intervention, and

39

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

40

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

41

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Milo F. Dennis, and the other interveners with him in his said bill joined, for want of equity in said bill, and

42

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

43

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

44

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

45

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

46

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

47

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

48

The Court erred in not requiring the complainant to answer said bill in intervention, and

49

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

50

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

51

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Frank Terrace, and the other interveners with him in his said bill joined, for want of equity in said bill, and

52

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

53

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

54

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

55

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

56

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Com-

pany and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

57

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

58

The Court erred in not requiring the complainant to answer said bill in intervention, and

59

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

60

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

61

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles J. Vanzile and the other interveners with him in his said bill joined, for want of equity in said bill, and

62

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

63

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

64

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

65

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

66

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

67

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

68

The Court erred in not requiring the complainant to answer said bill in intervention, and

69

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

70

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

71

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Luther E. Trowbridge, and the other interveners with him in his said bill joined, for want of equity in said bill, and

72

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

73

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

74

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

75

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

76

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

77

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

78

The Court erred in not requiring the complainant to answer said bill in intervention, and

79

The Court erred in not granting to said interveners

and each of them, the relief prayed for by them and each of them, respectively in said bill, and

80

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

81

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Geo. W. Wright, and the other interveners with him in his said bill joined, for want of equity in said bill, and

82

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

83

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

84

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

85

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

86

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

87

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

88

The Court erred in not requiring the complainant to answer said bill in intervention, and

89

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

90

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

91

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, in-

dividually and as Trustee, to the bill of intervention of the intervener, Elmer L. Hancock, and the other interveners with him in his said bill joined, for want of equity in said bill, and

92

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

93

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

94

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

95

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

96

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

97

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

98

The Court erred in not requiring the complainant to answer said bill in intervention, and

99

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

100

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them re-

spectively in said bill.

101

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Robert Aistrop, and the other interveners with him in his said bill joined, for want of equity in said bill, and

102

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

103

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

104

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

105

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

106

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

107

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

108

The Court erred in not requiring the complainant to answer said bill in intervention, and

109

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

110

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

111

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, B. W. Nunnally, and the other interveners with him in his said bill joined, for want of equity in said bill, and

112

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

118

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

114

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

115

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

116

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

117

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

118

The Court erred in not requiring the complainant to answer said bill in intervention, and

119

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

120

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

121

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Paul C. L'Amoreaux and the other interveners with him in his said bill joined, for want of equity in said bill, and

122

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners,

for want of equity in said bill, and

123

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

124

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

125

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

126

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

127

The Court erred in not requiring the Union Trust

Company, individually and as Trustee, to answer said bill in intervention and

128

The Court erred in not requiring the complainant to answer said bill in intervention, and

129

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

130

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

131

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, John F. Fowler, and the other inter-

veners with him in his said bill joined, for want of equity in said bill, and

182

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

183

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want, of equity in said bill, and

184

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

185

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

136

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention and

137

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention and

138

The Court erred in not requiring the complainant to answer said bill in intervention, and

139

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

140

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them

to the relief prayed for by them and each of them respectively in said bill.

141

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervenor, L. C. Keylon, and the other interveners with him in his said bill joined, for want of equity in said bill, and

142

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individualy and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

143

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

144

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

145

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

146

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

147

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

148

The Court erred in not requiring the complainant to answer said bill in intervention, and

149

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

150

The Court erred in not granting to said interveners

or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

151

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, R. E. Cameron, and the other interveners with him in his said bill joined, for want of equity in said bill, and

152

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

153

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

154

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

155

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

156

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

157

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

158

The Court erred in not requiring the complainant to answer said bill in intervention, and

159

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

160

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respctively in said bill.

161

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Charles W. Varnum, and the other interveners with him in his said bill joined, for want of equity in said bill, and

162

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as

Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

163

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

164

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

165

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

166

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

167

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

168

The Court erred in not requiring the complainant to answer said bill in intervention, and

169

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

170

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

171

The Court erred in sustaining the demurrer of the

defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Nicholas Herrman, and the other interveners with him in his said bill joined, for want of equity in said bill, and

172

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

173

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

174

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

175

The Court erred in sustaining the motion of the com-

plainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

176

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

177

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

178

The Court erred in not requiring the complainant to answer said bill of intervention, and

179

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

180

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

181

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company, and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the interveners, Edwin F. Anderson, and the other interveners with him in his said bill joined, for want of equity in said bill, and

182

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

183

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

184

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

185

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

186

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

187

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

188

The Court erred in not requiring the complainant to answer said bill in intervention, and

189

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

190

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

191

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Fred J. Gould, and the other interveners with him in his said bill joined, for want of equity in sad bill, and,

192

The Court erred in sustaining the demurrer of the

defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

193

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

194

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

195

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order strking said bill, for want of equity in said bill, and

196

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

197

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

198

The Court erred in not requiring the complainant to answer said bill in intervention, and

199

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

200

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

201

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company,

Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Abram B. Horner, and the other interveners with him in his said bill joined, for want of equity in said bill, and

202

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

203

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

204

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

205

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of

said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

206

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

207

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

208

The Court erred in not requiring the complainant to answer said bill in intervention, and

209

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

210

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to

equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

211

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, George B. Bothwell, and the other interveners with him in his said bill joined, for want of equity in said bill, and

212

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

213

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

214

The Court erred in sustaining the motion of the de-

fendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

215

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

216

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

217

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

218

The Court erred in not requiring the complainant to answer said bill in intervention, and

219

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each

of them, respectively in said bill, and

220

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

221

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Hervey L. Keyes, and the other interveners with him in his said bill joined, for want of equity in said bill, and

222

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

223

The Court erred in sustaining the motion of the de-

fendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

224

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

225

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

226

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

227

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

228

The Court erred in not requiring the complainant to answer said bill in intervention, and

229

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

230

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

231

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Marvin P. Alford, and the other interveners with him in his said bill joined, for want of equity in said bill, and

232

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

233

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

234

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

235

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

236

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company

and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

237

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

238

The Court erred in not requiring the complainant to answer said bill in intervention, and

239

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them, respectively in said bill, and

240

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

241

The Court erred in sustaining the demurrer of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to the bill of intervention of the intervener, Albert Bozarth, and the other interveners with him in his said bill joined, for want of equity in said bill, and

242

The Court erred in sustaining the demurrer of the defendant, Union Trust Company, individually and as Trustee, to the bill of intervention of said interveners, for want of equity in said bill, and

243

The Court erred in sustaining the motion of the defendants, Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

244

The Court erred in sustaining the motion of the defendant, Union Trust Company, individually and as Trustee, to strike the bill of intervention of said interveners, for want of equity in said bill, and

245

The Court erred in sustaining the motion of the complainant for an order striking the bill of intervention of said interveners, and in granting and entering the order striking said bill, for want of equity in said bill, and

246

The Court erred in not requiring the Oregon & California Railroad Company, Southern Pacific Company and Stephen T. Gage, individually and as Trustee, to answer said bill in intervention, and

247

The Court erred in not requiring the Union Trust Company, individually and as Trustee, to answer said bill in intervention, and

248

The Court erred in not requiring the complainant to answer said bill in intervention, and

249

The Court erred in not granting to said interveners and each of them, the relief prayed for by them and each of them respectively in said bill, and

250

The Court erred in not granting to said interveners or any of them, any equitable relief,

As said bill of intervention contains allegations and matters entitling said interveners and each of them to equitable relief, and

Said bill of intervention contains allegations and matters entitling the said interveners, and each of them to the relief prayed for by them and each of them respectively in said bill.

251

The Court erred in holding that these interveners and cross-complainants were not entitled to the relief prayed for by them and each of them, respectively, and

252

The Court erred in not holding that these interveners and cross-complainants were entitled to the relief prayed for by them and each of them, respectively, and

253

The Court erred in holding that none of these interveners and cross-complainants were entitled to the relief prayed for by them, and

254

The Court erred in holding that none of these interveners and cross-complainants were entitled to any relief;

As, their said bills of intervention and cross-complaint and each of them, contain allegations and mat-

ters entitling these interveners and cross-complainants and each of them, to equitable relief; and

Said bills of intervention and cross-complaint and each of them, contain allegations and matters entitling the interveners and cross-complainants and each of them, to the relief prayed for by them and each of them, respectively, in their said bills.

255

The Court erred in holding that the United States, complainant herein, was entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

256

The Court erred in not holding that the United States, complainant herein, was not entitled to a forfeiture of the lands or any of the lands sought to be purchased by the interveners and cross-complainants herein or any of them.

257

The Court erred in holding that the lands or any thereof described in this decree, were and had been forfeited to the complainant, and that a decree be entered forfeiting said lands, or any threof, to the complainant.

258

The Court erred in holding that the lands sought to

be purchased by the interveners and cross-complainants herein, should be forfeited.

259

The Court erred in holding that the lands or any thereof sought to be purchased by these interveners and cross-complainants, or any of them, described in said decree, were and had been forfeited to the United States, complainant herein, and that a decree be entered forfeiting said lands or any thereof to the complainant.

260

The Court erred in holding that the proviso in the said act of April 10, 1869, was a condition subsequent.

261

The Court erred in holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

262

The Court erred in not holding that the proviso in the amendment of April 10, 1869, requiring the sale of lands to actual settlers only, in quantities not exceeding

one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not and is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said grant.

263

The Court erred in holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was or is a condition subsequent, the breach of which entitled the United States, complainant herein, to a forfeiture of the lands covered by said land grant.

264

The Court erred in not holding that the provision in the act of May 4, 1870, requiring the sale of lands to actual settlers only, in quantities not exceeding one-quarter section to any one purchaser and at a price not to exceed $2.50 per acre, was not nor is not a condition subsequent, the breach of which would entitle the United States, complainant, to a forfeiture of the lands covered by said land grant.

265

The Court erred in holding that the consequence and penalty and forfeiture was attached by Congress to a breach, should such there be, of the proviso of April 10, 1869.

266

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or proviso in the act of April 10, 1869, requiring sales of land to settlers.

267

The Court erred in holding that the provision in the West Side grant, requiring sales to settlers, was a condition subsequent, and

268

The Court erred in not holding that the provision in the West Side grant, requiring sales to settlers, was not a condition subsequent, as

(a) Said provision is not coupled with and does not contain any appropriate words importing a condition subsequent, and

(b) Said provision does not contain any language importing a right to forfeiture or re-entry for condition broken.

269

The Court erred in holding that the consequence and penalty of forfeiture was attached by Congress to a breach, should such there be, of any provision of said act of May 4, 1870, touching sales to actual settlers.

270

The Court erred in holding that the consequence and penalty of forfeiture was intended by Congress to be attached to a breach, should such there be, of the covenant or provision in the act of May 4, 1870, requiring sales to settlers.

271

The Court erred in holding that there was jurisdiction in the Court on the equity side to enforce a forfeiture of said East Side grant for the breach of an assumed condition subsequent if such there was, in said proviso of said act of April 10, 1869.

272

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the East Side grant, for breach of an assumed condition subsequent in the proviso contained in the act of April 10, 1869.

273

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the East Side grant for breach of an assumed condition subsequent in the proviso in the act of April 10, 1869, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants

which had become vested, in parts of said East Side grant, under the terms of said proviso, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

274

The Court erred in holding that there was jurisdiction in the court on the equity side to enforce a forfeiture for the breach of an assumed condition subsequent, if such breach there was, in any provision of said act of May 4, 1870.

275

The Court erred in holding that there was jurisdiction in the Court on the equity side to decree a forfeiture of the title of the defendants to the lands embraced in and covered by the West Side grant, for breach of an assumed condition subsequent contained in the act of May 4, 1870.

276

The Court erred in assuming jurisdiction on the equity side to enforce a forfeiture of the West Side grant for breach of an assumed condition subsequent

contained in said grant, as

(a) The effect of such assumption was to divest the interests of the interveners and cross-complainants, which had become vested in parts of the West Side grant, under the terms of said grant, and

(b) No declaration of forfeiture had ever been made by Congress prior to the vesting of such interest, and

(c) No declaration of forfeiture had been made by Congress prior to the entry of said decree, and

(d) No declaration of forfeiture had been made by Congress prior to the commencement of said suit.

277

The Court erred in holding that by its joint resolution of April 13, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeiture by the Attorney General or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the East Side grant, for or on account of any assumed breach of conditions of the priviso of the act of April 10, 1869.

278

The Court erred in holding that by its joint resolution of April 30, 1908, the Congress of the United States forfeited or intended to forfeit, or authorized the forfeit-

ure by the Attorney General, or intended to authorize the forfeiture by the Attorney General, or authorized or intended to authorize or empower the Court to forfeit or decree a forfeiture of the lands embraced within the West Side grant for or on account of any assumed breach of condition contained in said grant.

279

The Court erred in holding that there was any cause of action or foundation of jurisdiction for forfeiture in respect to either of said grants, in any re-entry for breach of condition or legislation equivalent thereof, or in any legislative declaration of forfeiture.

280

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was not sufficiently definite to be enforced as a condition subsequent.

As such proviso does not contain any words importing a right of forfeiture or re-entry for condition broken.

281

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant of all right and interest of the defendants in or to the lands embraced within the grant of 1866, for breach of the assumed condition contained in the amendment of April 10, 1869, as

(a) Assuming that said proviso was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these intervenors and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

282

The Court, being a court of equity, erred in decreeing a forfeiture to the complainant, of all right and interest of the defendants, in or to the lands embraced within the West Side land grant, for breach of the assumed condition contained in the act of May 4, 1870, as

(a) Assuming that said provision was a condition subsequent, for breach of which forfeiture could be had, such condition subsequent was and is also a covenant; and

(b) The complainant prayed in its bill of complaint for a specific performance of this covenant, and

(c) Such forfeiture was and is inequitable and should not be decreed by any court of equity where there is any other means of doing justice between the parties; and

(d) The complainant prayed for specific performance of the covenant, and the Court should have granted such prayer, as by such performance justice and equity could have been done to all of the parties to the suit without forfeiture; and

(e) The Court was without jurisdiction to and it was inequitable for it to divest defendant, Oregon and

California Railroad Company of title as trustee for the benefit of the interveners and cross-complainants, sestui que trustent, with interests vested prior to said decree; and

(f) In divesting the railroad company of title by forfeiture, the Court, in effect, imposed a penalty upon the railroad company to the extent of its interest in the land forfeited, to-wit: in the amount of $2.50 per acre for each acre of the land so forfeited, for and on account of the breach of its covenant, the imposing of which penalty is wholly inequitable, and

(g) By forfeiture the Court divested the vested interest of these interveners and cross-complainants and each of them, without any fault on their part or on the part of any of them, all of which is wholly inequitable.

283

The Court erred in not holding that this suit cannot be maintained by complainant as one to enforce forfeiture nor to quiet title, as

(a) Neither the United States nor Congress has declared a forfeiture; and

(b) The fact of forfeiture had not been adjudicated by a court of law; and

(c) The defendant, railroad company, holds the legal title to and the possession of said granted lands; and

(d) Complainant having asked for forfeiture and in the alternative, for specific performance, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance; and

(e) In view of specific performance, a decree quieting title in the Government, cannot be had.

284

The Court erred in not holding that the Government was estopped to claim forfeiture of the lands embraced within each and both of said land grants, as

(a) The Government in its bill of complaint bases its right to recover, upon the refusal of the railroad company to sell said lands to the interveners and cross-complainants and others similarly situated, and

(b) The Government in its bill of complaint prayed that these interveners and cross-complainants might be permitted to enforce their rights herein, and

(c) The Government having come into a court of equity, is estopped to claim forfeiture when equitable relief by performance can be had; and

(d) The Government is estopped to claim forfeiture in lieu of performance, since the interveners and cross-complainants have come into court upon the invitation of the Government and furnished the means whereby performance may be had.

285

The Court erred in holding that the provisions in each and both of said land grants concerning sales to settlers, are negative provisions only, designed to prevent sales to others than settlers in quantities greater than one-quarter section to any one purchaser and at prices greater than $2.50 per acre, and not positive provisions requiring sales to settlers in quantities not greater than one-quarter section to any one purchaser and at a price not greater than $2.50 per acre.

286

The Court erred in not holding that the provisions of each and both of said land grants concerning sales to settlers were both positive and negative, requiring the grantee to sell to settlers, who should apply to buy, not more than one-quarter section, at a price not greater than $2.50 per acre, and requiring said grantee to refrain from selling any of the granted lands to others than settlers or in quantities greater than one-quarter section or at a price greater than $2.50 per acre.

287

The Court erred in holding that the provisions in each and both of said land grants, requiring sales to settlers, are not positive covenants which may be specifically enforced.

288

The Court erred in holding that the provisions in each and both of said land grants requiring sales to set-

tlers, is a negative covenant only, which may be enforced by the Government only, and that the only means of such enforcement are by forfeiture for breach thereof.

289

The Court erred in decreeing a forfeiture of those lands included in either or both of the grants to the railroad company or which the interveners and cross-complainants had made application to purchase from and tendered to the railroad company the sum of $2.50 per acre and offered to become actual settlers on the lands so applied for, prior to the adoption by Congress of the joint resolution of April 30, 1908, as

By so applying, tendering the purchase price and offering to become an actual settler upon the lands so applied for, each intervener and cross-complainant has acquired a vested interest in the land applied for, which cannot be divested by Congress, assuming that said provisions are conditions subsequent, and that the adoption of said joint resolution by Congress was a declaration of forfeiture for breach thereof.

290

The Court erred in holding that although the provisions in each and both of said land grants were designed to devote the lands conveyed by said grants, to settlement and tillage and to prevent the monopoly of the land and that such grants were laws as well as grants, that notwithstanding the railroad company might defeat the purpose of the provisions requiring sales to set-

tlers, by themselves monopolizing and holding the lands and refusing to sell them at all, and by refusing to sell any of them except to such persons and in such quantities as it saw fit within the price and terms provided in the grant.

291

The Court erred in not holding that the purpose of the joint resolution of Congress of April 30, 1908, was to authorize the enforcement of a forfeiture for any breach of an assumed condition subsequent in either of said land grants, as an alternative only, of the refusal of the railroad company to perform the covenants requiring sales to settlers, after such performance had been decreed by the Court.

292

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized the enforcement of forfeiture for any breach of an assumed condition subsequent in either of said land grants, only in the event that specific performance of the covenants in said grants, requirig sales to settlers, could not be enforced.

293

The Court erred in not holding that the joint resolution of Congress of April 30, 1908, authorized a forfeiture of the legal title of the railroad company for breach of an assumed condition subsequent in either of

said land grants, only as a means of carrying into effect the covenants in said grants requiring sales to settlers.

294

The Court erred in holding that at the time of the filing of the bill of complaint herein and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company, did not have possession of said grants or either of them.

295

The Court erred in not holding that at the time of filing of the bill of complaint herein, and ever since, and for a long time continuously next prior thereto, the Oregon and California Railroad Company had legal title and the possession of all lands of which forfeiture is sought by said bill of complaint.

296

The Court erred in holding that the United States, complainant herein, is the owner in fee simple or in possession of said lands or any part thereof or entitled to said lands or entitled to the possession of the same or any part thereof, which are sought to be purchased by these interveners and cross-complainants or any of them.

297

The Court erred in holding that, as a foundation for a suit to quiet its title to either of said grants, or any

part thereof, the complainant was in possession of the said grants, or either of them, or any part thereof; and in holding that the Oregon and California Railroad Company did not have the possession of the same.

298

The Court erred in holding as a foundation for a suit by complainant, to quiet its title to the said grants or either of them, or any part thereof, that the same had not been reduced to possession, and were unoccoupied and vacant, and not in possession of said defendant, Oregon and California Railroad Company.

299

The Court erred in not holding that the United States, complainant herein, is not the owner in fee simple, nor in possession of said lands or any part thereof, nor entitled to said lands, nor entitled to the possession of the same or any part of the same, which are sought to be purchased by these interveners and cross-complainants or any of them.

300

The Court erred in holding that the complainant is the owner in fee simple, or in possession of said lands or any part thereof, or entitled to the possession of the same or any part thereof.

301

The Court erred in holding that as a foundation for

a suit to quiet its title to either of said grants, or any part thereof, the said complainant had legal title to the same, or either of them, or any part thereof; and in holding that the defendant, Oregon and California Railroad Company did not have the legal title to such grants.

302

The Court erred in holding that the title of the United States of America, of or in said lands or estates in lands sought to be purchased by these interveners and cross-complainants or any of them, be or is by said decree, quieted and confirmed, particularly as to any claim or claims of right, title and interest in, to or upon the same, in favor of these interveners and cross-complainants or any of them.

303

The Court erred in holding that the lands and estates in lands in the said decre described, and which were sought to be purchased by the interveners and cross-complainants herein or any of them, either in whole or in part, now are forfeited to or that the title to or any part thereof, has reverted to and now is revested in the United States of America, or that the same or any part thereof, now are the absolute property of the United States of America, or are free from any and all claim or claims of right, title or interest or lien in, to or upon the same or any part thereof, by or in favor of these interveners and cross-complainants or any of them.

304

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

305

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of July 25, 1866, and the act of April 10, 1869, amendatory thereof.

306

The Court erred in holding that the United States, complainant herein, was entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants and upon the terms provided in the act of May 4, 1870.

307

The Court erred in not holding that the United States, complainant herein, was not entitled to an injunction restraining the defendants or any of them, from conveying to these interveners and cross-complainants, any of the lands sought to be purchased by them respectively, upon the terms proposed by said interveners and cross-complainants, and upon the terms provided in the act of May 4, 1870.

308

The Court erred in holding that the United States, complainant herein, was entitled to any injunctive relief whatever as against these interveners and cross-complainants or any of them.

309

The Court erred in holding that the United States, complainant herein, was entitled to a decree restraining these interveners and cross-complainants, or any of them, from claiming or asserting any right, title interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

310

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree restraining these interveners and cross-complainants or

any of them, from claiming or asserting any right, title or interest or lien in, to or upon the lands sought to be purchased by these interveners and cross-complainants, respectively.

311

The Court erred in holding that the title of complainant to the said lands, or any part thereof, should be quieted.

312

The Court erred in holding that the United States, complainant herein, was entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

313

The Court erred in not holding that the United States, complainant herein, was not entitled to a decree quieting and confirming in it the title to the lands sought to be purchased by these interveners and cross-complainants, or any of them.

314

The Court erred in holding that the proviso in the amendatory act of April 10, 1869, was not a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the Oregon and California Railroad Company to accept and become vested with the title to the lands

under the grant of 1866.

315

The Court erred in holding that the word "provided," introducing the proviso contained in the amendatory act of April 10, 1869, imported a condition subsequent, as

(a) The word "provided" is as appropriate for the purpose of importing a condition precedent as a condition subsequent, and

(b) Said proviso is coupled with a clause in said act contained permitting the grantees to accept said grant one year after the passage of said amendatory act, and

(c) Said proviso is not coupled with and does not bear any relation to the granting clause in said act amended.

316

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, was and is a covenant, the acceptance and agreement to perform which was imposed by Congress as a condition precedent to the right of the railroad company to accept and become vested with the title to the lands under the grant of 1866.

317

The Court erred in refusing to direct and decree a

specific performance on behalf of the United States, the complainant herein, and against the defendant, Oregon and California Railroad Company and the other defendants claiming by, through and under it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by each respectively, upon payment of the purchase price therefor.

318

The Court erred in not holding that the defendant, Oregon and California Railroad Company and other defendants claiming an interest in said land, be required to convey said land to the interveners and cross-complainants applying to purchase the same.

319

The Court erred in holding that the defendant, Oregon and California Railroad Company, and each and all of the other defendants claiming an interest in said land, should not be required to convey said lands to the interveners and cross-complainants applying for the same.

320

The Court erred in holding that Congress did not intend by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

321

The Court erred in not holding that Congress intended, by the act of April 10, 1869, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the grant of July 25, 1866, according to the terms of the proviso in said act of April 10, 1869.

322

The Court erred in holding that Congress did not intend by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side land grant, according to the terms of the provision in said act of May 4, 1870.

323

The Court erred in not holding that Congress intended, by the act of May 4, 1870, to give to actual settlers the right to compel the railroad company to sell to them the lands embraced within the West Side grant, according to the terms of the provision in said act of May 4, 1870.

324

The Court erred in refusing to direct and decree a specific performance on behalf of the interveners and cross-complainants and each of them, against the defendant, Oregon and California Railroad Company, and the other defendants claiming by, through and un-

der it, requiring said defendants to convey to these interveners and cross-complainants, the lands sought to be purchased by said interveners and cross-complainants, respectively, as prayed for in their several bills.

325

The Court erred in holding that the provisions in each and both of said grants did not constitute contracts entered into by and between the Government and the railroad company, for the benefit of and enforcible by the interveners and cross-complainants.

326

The Court erred in holding that the proviso in the amendatory act of April 10, 1869,, requiring sales to settlers, was not a convenant to a use and did not impress a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land, and to purchase the same in quantities and at prices provided by said amendatory act.

327

The Court erred in not holding that the proviso in the amendatory act of April 10, 1869, requiring sales to settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those, who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said amendatory act.

328

The Court erred in holding that the provision in the act of May 4, 1870, relating to sale of land to actual settlers, was not a covenant to a use and did not impress a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided by said act.

329

The Court erred in not holding that the provision in the act of May 4, 1870, relating to sale of lands to actual settlers, was a covenant to a use and impressed a trust upon said lands for the benefit of those who in good faith should apply to make settlement upon said land and to purchase the same in quantities and at prices provided in said act.

330

The Court erred in holding that the railroad company was not constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, under the provisions requiring sales of lands to settlers, referred to, in that

(a) "The nature and quality of their interests are not specific and definite," and, in that

(b) "They are not susceptible of identification as such," and

331

The Court erred in not holding that the railroad company, by the provisions in said grants contained, was constituted a trustee for the benefit of the interveners and cross-complainants as sestui que trustent, as

(a) The nature and quality of said interests under said grants are sufficiently specified and definite, and

(b) Their application to purchase and offer to settle upon the lands, is a sufficient identification.

332

The Court erred in holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, did not give to the respective interveners and cross-complainants a vested interest in said lands, in default of an acceptance of such offers and conveyances of said lands by the Oregon and California Railroad Company.

333

The Court erred in not holding that the offer and tender by the interveners and cross-complainants, to purchase the lands sought by them to be purchased of and from the Oregon and California Railroad Company, gave to the respective interveners and cross-complainants, a vested interest in said lands, in default of an acceptance of such offers and conveyances, by the

Oregon and California Railroad Company.

334

The Court erred in holding that the proviso in the act of April 10, 1869, is not sufficient definite and certain to be enforced as a covenant to a use or as a trust.

335

The Court erred in not holding that the proviso in the act of April 10, 1869, is sufficient definite and certain to be enforce das a covenant to a use or as a trust.

336

The Court erred in not holding that proviso in the act of April 10, 1869, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a

337

The Court erred in not holding that proviso in the act of April 10, 1869, for the sale of lands to actual settlers was intended by Congress as and was and is a covenant to a use only, and not a condition subsequent, as

(a) Said proviso contains specific and direct commands which were assented to, and performance thereof promised, by the Oregon and California Railroad Company, and

(b) Said proviso does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

338

The Court erred in holding that the proviso in the act of April 10, 1869, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

339

The Court erred in not holding that the proviso in the act of April 10, 1869, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

340

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the East Side grant, or any part thereof, except as a settler of the trust in said lands.

341

The Court erred in holding that the provision in the act of May 4, 1870, is not sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

342

The Court erred in not holding that the provisions in the act of May 4, 1870, is sufficiently definite and certain to be enforced as a covenant to a use or as a trust.

343

The Court erred in holding that the provisions in the act of May 4, 1870, requiring sales to settlers, is sufficiently definite and certain as a condition subsequent, to entitle the Government to a forfeiture for its breach, and that it is not sufficiently definite and certain to be specifically enforced as a covenant to a use, or as a covenant creating a trust.

344

The Court erred in not holding that the provisions in the act of May 4, 1870, requiring sales to settlers, was intended by Congress as and was and is a covenant to a use only and not a condition subsequent, as

(a) Said provision contains specific and direct commands which were assented to and agreed to and performance thereof promised by the railroad company, and

(b) Said provision does not contain any clause providing for forfeiture or re-entry for breach of such covenant, and

(c) Said contract devotes said land to settlement and tillage and ultimate ownership by settlers.

345

The Court erred in holding that the provisions in the act of May 4, 1870, was not a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

346

The Court erred in not holding that the provision in the act of May 4, 1870, was a covenant to a use, impressed upon and running with the title to the land, until the title should have ultimately become vested in an actual settler, upon the terms and under the conditions provided in said grant.

347

The Court erred in holding that the United States, complainant herein, had any right, title or interest in or to the land embraced within and covered by the West Side grant, or any part thereof, except as a settler of the trust in said lands.

348

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the East Side land grant or any part theerof, which it could enforce in this action, except such rights as it has as a settler of the trust in said lands, to enforce the provision of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

349

The Court erred in holding that the United States, complainant herein, had any right, title or interest in and to the lands embraced within the West Side land grant or any part thereof, which it could enforce in this action, except such rights as it had or has as a settler of the trust in said lands to enforce the provisions of said trust, and such rights as it had and has to carry into effect in said suit, its public policies with relation to its granted lands, and

350

The Court erred in not holding that this suit can only be maintained by complainant as one to compel the specific performance of a trust covenant, or to enforce a public policy, as

(a) Neither of said land grants contains a provision importing a condition subsequent, upon the breach of which, forfeiture could be had, and

(b) Congress has never declared a forfeiture of either of said land grants for breach of any condition subsequent, assuming that there is such condition in either of said land grants, and

(c) The fact of forfeiture has never been adjudicated by a court of law, and

(d) The defendant, Oregon and California Railroad Company holds the legal title to and possession of said lands, and

(e) Complainant having asked for forfeiture and in the alternative for specific performances, this suit cannot be maintained for forfeiture, since equitable relief may be granted by specific performance, and

(f) In view of specific performance a decree quieting title in the

351

The Court erred in not holding, on the assumption that the said proviso in the act of April 10, 1869, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit in equity, to waive forfeiture, and elected to specifically enforce said proviso as a covenant to a use only.

352

The Court erred in not holding, on the assumption that the said provision in the act of May 4, 1870, is a condition subsequent, for breach of which forfeiture might be had, that complainant elected, by filing its suit

in equity, to waive forfeiture, and elected to specifically enforce said provision.

353

The Court erred in holding that the interveners and cross-complainants were not such actual settlers as were contemplated by the acts of April 10, 1869, and May 4, 1870.

354

The Court erred in holding that these interveners and cross-complainants did not have vested interests in the lands sought to be purchased by them and each of them respectively, by reason of their various offers and tenders to purchase said lands upon the terms provided in the acts of April 10, 1869, and May 4, 1870.

355

The Court erred in holding that the evidence in this cause was sufficient to entitle complainant to the decree rendered herein.

356

The Court erred in not holding that the evidence in this cause is insufficient to support or sustain the decree rendered.

357

The Court erred in holding that the evidence adduced in support of the complaint of the United States, complainant herein, was sufficient to entitle complainant to a forfeiture of the title to the lands sought to be

purchased by these interveners and cross-complainants or any of them.

358

The Court erred in not holding that the evidence adduced in support of the complaint of the United States, complainant herein, was not sufficient to entitle complainant to a forfeiture of the title to the lands sought to be purchased by these interveners and cross-complainants or any of them.

359

The Court erred in holding that the United States, complainant herein, was entitled to recover its costs and disbursements herein, or any costs or disbursements herein, against these interveners and cross-complainants, or any of them, and that a decree should be entered to that effect.

WHEREFORE, these interveners and cross-complainants, jointly and severally, pray that the said decision, judgment and decree and each and every part thereof, be reversed, and that the Court enter a decree on behalf of the interveners and cross-complainants as prayed for by them and each of them, respectively, in their several bills of intervention and cross-complaints heretofore filed herein.

And for such other, further or different relief as to this Court may seem just and equitable in the premises.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Socilitors and Attorneys for said defendants cross complainants, John H. Haggett, Charles W. Mead, William Otterstrom, Angus MacDonald, John T. Moan, Joseph D. Hadley, Henry C. Ott, Fred L. Freebing, William Cain, R. T. Aldrich, and O. V. Hickman.

A. C. WOODCOCK,

E. L. C. FARRIN,

DAN R. MURPHY,

Solicitors and Attorneys for said interveners William F. Slaughter and each and all of the persons whose names are specifically set forth in the above title to this cause, com-

mencing with and including the said William F. Slaughter, down to and including Arthur Persinger, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 24th day of September, 1908.

L. G. ENGLISH,

Solicitors and Attorneys for the said interveners Edward D. Townsend, Louis G. English, Ralph W. Core and Edgar O. Holladay.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners John Burbee, Marion Smith, Charles Burbee, Oscar H. Sherman and Charles Wiest.

A. W. LAFFERTY,

Solicitors and Attorneys for the said interveners Milo F. Dennis and Leopold H. Deitz.

SHEPARD &

BURKHEIMER,

Successors to

SHEPARD & FLETT;

JOHN E. BURKHEIMER,

CHARLES E. SHEPARD,

C. I. LEAVENGOOD,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Frank Terrace and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Frank Terrace, down to and including John Zoffi, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 2nd day of December, 1908.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Charles J. Vanzile and each and all of the persons whose names are speci-

fically set forth in the above title to this cause, commencing with and including the said Charles J. Vanzile, down to and including E. R. Seeley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 23rd day of December, 1908.

MOULTON & SCHWARTZ,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said intervener Luther E. Trowbridge.

A. C. WOODCOCK,

GEO. W. WRIGHT,

Solicitors and Attorneys for the said interveners George W. Wright, William W. Bailey, Willetta Wright, W. H. Queener, Eulah Wright and Joseph E. Wright.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Elmer L. Hancock and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Elmer L. Hancock, down to and including Lucius P. Ranous, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 8th day of February, 1909.

OGLESBY YOUNG,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Robert Aistrop, Herb Palmer, Clara L. Palmer, Tina Palmer, P. L. Palmer, Walter Anderson, Lewis Johanson, Edwin Rice, W. C. Rhude and Frank A. Durrah.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners B. W. Nunnally, William Weist, John Weist, Francis Weist, Geo. E. Walling, W. D. Sappington, Edward E. Stucker and O. N. Cranor.

G. G. SCHMITT,

GRIDLEY, CULVER

& KIND,

PAUL C. L'AMOREAUX,

Solicitors and Attorneys for the said interveners Paul C. L'Amoreaux, Albert E. Barkman, Clyde M. Adair, Carrie M.

Wicker, Julia S. Skilton, Edward H. White, Olive Maguire, Coleman S. Everett, Isadore Whiteson, Harry Hamill, John C. Hamill, Julia R. Fox, Henry W. McFarlane, Fred G. Merrill, Edward Robertson Abbot, Manning D. L'Amoreaux, Agnes G. Stewart, Ida M. Pahlman and Rose L'Amoreaux.

B. W. COINER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners John F. Fowler, and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said John F. Fowler, down to and including Minnette Johnson, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

L. D. MAHONE,

Solicitors and Attorneys for the said interveners L. C. Keylon, E. E. Keylon, C. S.

Staats, E. J. Staats, Rodney C. White, Ida A. White, Grant Nixon, Adolphus Gaunt, and Anton Carlson.

DAY & BREWER,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners R. E. Cameron and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said R. E. Cameron, down to and including John A. Miller, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 1st day of March, 1909.

SETON & STRAHAN,

CLAUDE STRAHAN,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Charles W. Varnum, Elizabeth M. Edwards, Thomas F. Hartzel, Madge Bartholomew, Daisy Lebo, Mary E. Black, Arthur J. Pate, Flora E. King, Howard

S. Robertson, W. E. Bowdon, Frank B. Mauzer, F. H. Southerland, M. B. Carpenter, H. E. Gould, J. N. Husted, Magdalene Haycox, Samuel Haycox, Louise Rommel, R. W. Edwards, Robert James, Clare M. James, Albert Trego, Leta G. Trego, Harry Hurlbut, Hally E. Hurlbut, Charles E. Pate, Benjamin Bowles, Jesse Bowles, Peter J. Oleson, Frances R. Hopper, Miller E. Preston, Willis G. Mudd, A. C. Spencer, Martin Herbert Kennedy, Dell Dickson, Chauncey Thomas, Frank B. Manzer and Adeline James.

LEROY LOMAX,

Of Solicitors and Attorneys for the said interveners Nicholas Herrman, Robert Kruse, George W. Sepham, F. E. Gige, Emma Case, Celia Zaugg, George F. Brooks, Harriett Poll, Mary S. Blair, Jay Tice, Frank E. Poll, R. E. Andrews, John Subert, F. K. Kamp, James McHugh, C. B. Hurby, J. E. Ketcham, G. A. Huntzicher, August Matz, Maud Stewart, Fred C. Lundy, Charles F. Barnes, F. A. Hildebrand, Henry A. Balles, J. P. Tiffault, Fred Bustrin, H. M. Bustrin, Byron G. Hall, William O. Hall, Charles E. Lennan,

Hortence B. Lennan, P. G. Larson, William Hoeck and Henry Hoeck.

PARIS MARTIN,

JNO. MILLS DAY,

Solicitors and Attorneys for the said interveners Edwin F. Anderson and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Edwin F. Anderson, down to and including Montello Gray, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 12th day of May, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Fred J. Gould and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Fred J. Gould, down to and including E. G. Bentley, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 28th day of July, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners Abram B. Horner and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Abram B. Horner, down to and including William Thwaites, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of December, 1909.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners George B. Bothwell and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said George B. Bothwell, down to and including Leota Travers, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 6th day of October, 1909.

PETER J. DANHOFF, and

H. M. ESTERLY,

Solicitors and Attorneys for the said interveners, Hervey L. Keyes, Chester H. Thornson, Chester H. Thomson, Lyn S. Carter, Byron D. West, George W. Jackson, Laura E. Singer, Alba L. Holmes, Harold R. Nye, Miles B. Campbell, James A. Roxburgh, James A. Rosburgh, Walter J. Hills, Leo A. Caro, Homer F. Van Drezer, Christopher M. Kelly, Samuel B. Ardis, Charles H. Winchester, Charles B. Winchester, Charles J. Kindel, Albert Vandenberg, Anna H. Tromper, Anna H. Trompen, John N. Tromper, John N. Trompen, Joe Van Arondonk, Ira Lubbers, Reimer Van Soest, E. J. Hyink, Henry Strakes, Cornelius Schaap, Elbert S. Schilstra, Henry K. Boer, John De Haan, William Bommelje, Benjamin Hoffman, Peter Bogema, John Bosker, Jacob P. Bosker, Edward C. Smith, John W. Huenink, John H. Huenink, Bertha Moe Seaver, and Elmer H. Ruslink.

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said inter-

veners Marvin P. Alford and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Marvin P. Alford, down to and including Donald C. Barber, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 14th day of February, 1910.

H. G. LAKE,

LEWIS C. GARRIGUS,

Solicitors and Attorneys for the said interveners Albert Bozarth and each and all of the persons whose names are specifically set forth in the above title to this cause, commencing with and including the said Albert Bozarth, down to and including Retta E. Bishard, being all of the persons who, by leave of court, filed their joint complaint in intervention in this cause on the 15th day of March, 1910.

Due service of these, the foregoing and following Assignments of Error is admited this 29th day of August, 1918.

MILLER, KING, LANE and TRAFFORD,
DOLPH, MALLORY, SIMON and GEARIN,
JOHN M. GEARIN,
Attys. and Counsellors for Union Trust Company.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, this 29th day of August, 1918.

PETER F. DUNNE, WM. D. FENTON, and JAMES E. FENTON,
Attorneys for Oregon and California Railroad Company, Southern Pacific Company, Stephen T. Gage, individually and as Trustee.

Service of these, the foregoing and following Assignments of Error is hereby acknowledged, August 29, 1918.

A. W. LAFFERTY,
Solicitor for Cross-Complainants and Interveners.

Service of the foregoing Assignment of Errors is admitted this 29th day of August, 1918.

J. C. M'REYNOLDS,
Attorney General.

B. D. TOWNSEND,
Spl. Asst, to Atty. General.

By GLEN E. HUSTED,
Spl. Asst. to Atty. General.

CLARENCE L. REAMES,
United States Attorney

By ROBERT R. RANKIN,
Assistant United States Attorney.

(Endorsed) Filed August 29, 1918, A. M. Cannon, Clerk United States District Court.

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(Deed of Trust Oregon & California Railroad Company to Latham, Atherton and Norris, Trustees, dated April 15, 1870).

Defendants' Exhibit 401.....7876
(Deed European & Oregon Land Company to Latham, Atherton and Norris, dated July 25, 1874).

Defendants' Exhibit 402.....7912
(Quitclaim deed No. 1719, issued for contract 3827, Oregon and California Railroad Company to the City of Portland, dated March 14, 1892).

Defendants' Exhibits, unnumbered.....7918
(Letter Benjamin Harris Brewster, Attorney General, to Hon. H. M. Teller, Secretary of the Interior, dated June 15, 1882).

(Statement from corporate records of Oregon Central Railroad Company of Salem, Oregon Central Railroad Company of Portland, and Oregon & California Railroad Company, compiled by Mr. McAllaster).

(Patent issued by the United States to Oregon & California Railroad Company, being third item to Exhibit No. 9 to the answer).

(Form of First Mortgage Construction Bonds of the Oregon Central Railroad Company (West Side).

(Form of Coupon to Bond above described).

(First Mortgage Bond of the Oregon & California Railroad Company of date April 15, 1870).

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